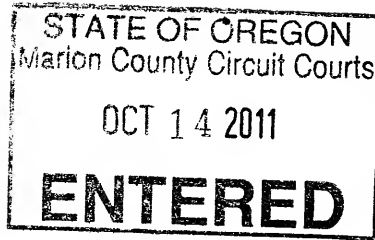


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STATE OF OREGON
MARION COUNTY COURTS
OCT 14 2011
FILED

8 IN THE CIRCUIT COURT OF THE STATE OF OREGON
9 MARION COUNTY CASE NO. 11C22357

10 PAUL R.J. CONNOLLY, PC, DEFINED	) COMPLAINT
11 BENEFIT PLAN, fka Connolly &	) (Actions on Notes)
12 Goldian, LLP, Defined Benefit Plan, and	) (Foreclosure of Security
13 THE EQUITY TRUST COMPANY CUSTODIAN	) Interest)
14 FBO PAUL R. J. CONNOLLY, IRA,	) Claims totaling
15	) \$577,366
16 Plaintiffs,)
17 vs.	) Filing fee per
18	) Ch. 595 15(1)(c)
19 CHARLES A. SIDES,)
20	) Not Subject to
21 Defendant.	) Mandatory Arbitration

22 **COMMON ALLEGATIONS:**

23 1.

24 The Defendant is an individual obligated on the notes at issue
25 herein and a resident of Marion County, Oregon.

26 **PLAINTIFFS FOR THEIR FIRST CLAIM FOR RELIEF for Action on a**
27 **Note, complain and allege;**

28 2.

29 On the 7th day of July, 2006, Plaintiffs, Paul R.J. Connolly,
30 PC, Defined Benefit Plan, fka Connolly & Goldian, LLP, Defined
31 Benefit Plan and The Equity Trust Company Custodian FBO Paul R. J.

1 Connolly, IRA, along with Michele Marchetti and Jim Iverson loaned
2 to Charles A. Sides the sum of \$446,020.37, and as evidence of said
3 loan Charles A. Sides, made, executed and delivered to Marchetti,
4 Iverson and Plaintiffs his promissory note in writing, which note
5 was dated the 7th day of July, 2006. Both the principal sums
6 loaned and interest thereon were payable as set forth in Exhibit
7 "1," attached, which is a true and correct copy of said promissory
8 note, hereby incorporated by reference as if set forth in full at
9 this place (hereinafter the "Note").

10 3.

11 On or about February 27, 2007, the sum loaned on the Note by
12 Jim Iverson was paid in full. On or about July 31, 2009, Michele
13 Marchetti's interest in the Note was acquired by Plaintiffs.

14 4.

15 Plaintiffs are now the lawful owners and holders of the Note.

16 5.

17 On July 8, 2007, Defendant was in default of the terms of the
18 Note in that he failed to pay all sums due on the Note which became
19 due and payable in full on that date. Plaintiffs declared, and do
20 hereby declare, all sums owing under the Note due and payable in
21 full.

22 6.

23 As of September 7, 2011, there was due and owing upon the Note
24 the sum of \$541,372.43 which includes the remaining principal and

1 interest accrued to September 7, 2011. Pursuant to the terms of
2 the Note, interest shall accrue on the unpaid balance at the rate
3 of 13% per annum. An accounting of the amount due on the Note as
4 of September 7, 2011 is attached hereto as Exhibit 2.

5 7.

6 Plaintiffs have had to employ counsel to represent them in
7 this action and have obligated themselves to pay a reasonable fee
8 for such services. Plaintiffs are entitled to recover reasonable
9 attorney fees from Defendant by virtue of the attorney fees
10 provision contained in the Note described above and attached hereto
11 as Exhibit "1".

12 FOR A SECOND CLAIM FOR RELIEF, PLAINTIFF PAUL R.J. CONNOLLY,
13 PC, DEFINED BENEFIT PLAN, FKA CONNOLLY & GOLDIAN, LLP, DEFINED
14 BENEFIT PLAN, for Action on a Note, complains and alleges;

15 8.

16 On the 13th day of December, 2006, Plaintiff, Paul R.J.
17 Connolly, PC, Defined Benefit Plan, fka Connolly & Goldian, LLP,
18 Defined Benefit Plan loaned to Charles A. Sides the sum of
19 \$15,750.00, and as evidence of said loan Charles A. Sides, made,
20 executed and delivered to said Plaintiff his promissory note in
21 writing, which said note was dated the 13th day of December, 2006,
22 both the principal sum and interest thereon were payable as set
23 forth in Exhibit "3," attached, which is a true and correct copy of

1 said promissory note, hereby incorporated by reference as if set
2 forth in full at this place.

3 9.

4 On the 22nd day of January, 2007, Plaintiff, Paul R.J.
5 Connolly, PC, Defined Benefit Plan, fka Connolly & Goldian, LLP,
6 Defined Benefit Plan loaned to Charles A. Sides the sum of
7 \$1,050.00, and as evidence of said loan Charles A. Sides, made,
8 executed and delivered to said Plaintiff his promissory note in
9 writing, which said note was dated the 22th day of January, 2007,
10 both the principal sum and interest thereon were payable as set
11 forth in Exhibit "4," attached, which is a true and correct copy of
12 said promissory note, hereby incorporated by reference as if set
13 forth in full at this place.

14 10.

15 On the 22nd day of March, 2007, Plaintiff, Paul R.J. Connolly,
16 PC, Defined Benefit Plan, fka Connolly & Goldian, LLP, Defined
17 Benefit Plan loaned to Charles A. Sides the sum of \$6,300.00, and
18 as evidence of said loan Charles A. Sides, made, executed and
19 delivered to said Plaintiff his promissory note in writing, which
20 said note was dated the 22nd day of March, 2007, both the principal
21 sum and interest thereon were payable as set forth in Exhibit "5,"
22 attached, which is a true and correct copy of said promissory note,
23 hereby incorporated by reference as if set forth in full at this
24 place.

11.

Plaintiff Paul R.J. Connolly, PC, Defined Benefit Plan, fka Connolly & Goldian, LLP, Defined Benefit Plan is the lawful owner and holder of the notes described in Paragraphs 8, 9 and 10 above and attached as Exhibits "3", "4" and "5" (hereinafter collectively referred to as "the Notes").

12.

On March 17, 2011, according to the terms of the Notes, Plaintiff called all sums due upon the Notes, and does hereby also declare, all sums owing under the Notes due and payable in full. Defendant is in default of the terms of the Notes in that he failed to pay all sums due which became due and payable in full on demand.

13.

As of September 13, 2011, there was due and owing upon the Notes the total sum of \$35,994.00 which includes the principal on all three Notes, and interest accrued on all three Notes to September 13, 2011. Pursuant to the terms of the Notes, interest accrues on the unpaid balance at the rate of 12% per annum. An accounting of the amounts due on the Notes as of September 13, 2011 is attached hereto as Exhibit 6.

14.

Plaintiff has had to employ counsel to represent it in this action and has obligated itself to pay a reasonable fee for such services. Plaintiff is entitled to recover reasonable attorney

1 fees from Defendant by virtue of the attorney fees provision
2 contained in the Notes described above and attached hereto as
3 Exhibits "3" "4" and "5".

4 **PLAINTIFFS FOR THEIR THIRD CLAIM FOR RELIEF for Foreclosure of**
5 **Security Interest, complain and allege;**

6 15.

7 Plaintiffs reallege and incorporate Paragraphs 2 through 7 of
8 their First Claim for Relief herein.

9 16.

10 For valuable consideration, on or about July 7, 2006,
11 Defendant, made executed and delivered to Paul R.J. Connolly, PC,
12 Defined Benefit Plan, fka Connolly & Goldian, LLP, Defined Benefit
13 Plan and The Equity Trust Company Custodian FBO Paul R. J.
14 Connolly, IRA; along with Michele Marchetti and Jim Iverson, an
15 instrument entitled "Assignment, Pledge and Security Agreement" for
16 the purpose of securing unto Michele Marchetti, Jim Iverson, and
17 Plaintiffs the payment of the Note described in paragraph 2 above.
18 Plaintiff's security interest thereby attached to the property
19 described in the Agreement, namely:

20 all of Defendant's member interest and member rights in
21 NORTHWEST NATIONAL, L.L.C., an Oregon limited liability
22 company, including, but not limited to, all dividends,
23 general intangibles related thereto, payments, dividends,
24 compensation, dissolution distributions, subscription
25 rights, liquidating dividends, fees, entitlements and
26 distributions on income and proceeds from assets, sales
27 and profits that are payable to Defendant that the
28 Defendant may derive by and from the LLC.

A true copy true and correct copy of the Agreement, is attached hereto as Exhibit "7" and hereby incorporated by reference as if set forth in full at this place (hereinafter "the Agreement").

17.

At the time of giving said security interest, Defendant was an owner of the collateral described on the Agreement.

18.

On or about February 27, 2007, the sum loaned by Jim Iverson on the Note secured by the Agreement was paid in full. On or about July 31, 2009, Michele Marchetti's interest in the Note and the Agreement was acquired by Plaintiffs.

19.

Plaintiffs are the owners and holders of the Agreement.

20.

Plaintiffs have had to employ counsel to represent them in this action and have obligated themselves to pay a reasonable fee for such services. Plaintiffs are entitled to recover reasonable attorney fees from Defendant, by virtue of the attorney fees provisions contained in the Note and the Agreement hereinabove described in Paragraphs 2 and 16 and attached hereto as Exhibits "1" and "7".

21.

No Other Action. The Plaintiff has no plain, speedy or adequate remedy at law, and no other proceeding at law or in equity has been commenced or is pending to foreclose the collateral described above. No proceeding at law or in equity, has been commenced or is pending to collect the Note or any portion thereof or to foreclose the Agreement.

All conditions precedent to the initiation and prosecution of the suit on the Note and foreclosure of the Agreement have been satisfied.

* * * * *

WHEREFORE, Plaintiffs pray for judgment against Defendant, Charles A. Sides, on their claims for relief as follows:

ON THE FIRST AND THIRD CLAIM FOR RELIEF:

1. For judgment in favor of Paul R.J. Connolly, PC, Defined Benefit Plan, fka Connolly & Goldian, LLP, Defined Benefit Plan and The Equity Trust Company Custodian FBO Paul R. J. Connolly, IRA (jointly and severally), and against Defendant, Charles A. Sides, in the sum \$541,372.43, plus interest thereon at the rate of 13% per annum, until entry of judgment herein;

2. Plus Plaintiffs' taxable costs and disbursements herein, including a reasonable attorney's fee; and for interest on the entire amount of said judgment at the agreed upon rate of 13% per annum from the date of judgment until paid in full

1 ON THE SECOND CLAIM FOR RELIEF HEREIN:

2 1. For judgment in favor of Paul R.J. Connolly, PC, Defined
3 Benefit Plan, fka Connolly & Goldian, LLP, Defined Benefit Plan,
4 and against Defendant, Charles A. Sides, in the sum \$35,994.00,
5 plus thereon at the rate of 12% per annum, until entry of judgment
6 herein;

7 2. Plus Plaintiffs' taxable costs and disbursements herein,
8 including a reasonable attorney's fee; and for interest on the
9 entire amount of said judgment at the agreed upon rate of 12% per
10 annum from the date of judgment until paid in full.

11 ON ITS THIRD CLAIM FOR RELIEF HEREIN:

12 1. For a judgment declaring Plaintiffs' security interest
13 represented by the Agreement, dated July 7, 2006, to be a valid and
14 subsisting lien on all of the collateral described therein, and
15 declaring that lien to be superior to any interest, lien, or claim
16 of the Defendant, in that collateral.

17 3. That Plaintiffs' security interest be foreclosed and that
18 the subject collateral, be sold by the Sheriff of Marion County,
19 Oregon, or the Sheriff of such other county where the subject
20 collateral may be found, whenever necessary to effectuate the
21 Judgment and Order of the Court as prayed for, in the manner
22 provided by law, and that the net proceeds of said sale be applied:

- 23 a. first toward the payment of the costs of said sale
24 b. then toward the payment of Plaintiff's judgment under its
25 First Claim for Relief;

1 c. if any surplus, then toward the payment of Plaintiff's
2 judgment under its Second Claim for Relief;

3 4. That Plaintiffs have and retain a deficiency judgment
4 against Defendant, Charles A. Sides, in the event that the bid at
5 said sale is less than the sum of Plaintiffs' entire judgment, plus
6 costs of sale.

7 5. That Plaintiffs or any other party be permitted to bid
8 for and purchase the collateral or any portion thereof at the sale;
9 and that the purchaser be decreed to be entitled to exclusive
10 possession of the said collateral from the date of sale and shall
11 be entitled to such remedies as are available at law to secure such
12 possession, if Defendant or any other person shall refuse to
13 immediately surrender possession to the purchaser.

14 6. Declaring that Defendant and all persons claiming through
15 or under him be forever foreclosed of any interest, claim, or right
16 in and to the collateral described above.

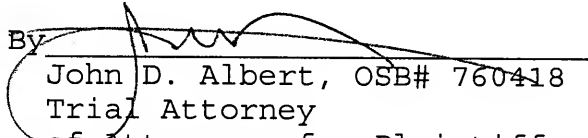
17 ON ALL CLAIMS FOR RELIEF HEREIN:

18 For such other and further relief as may be just and equitable
19 in the premises.

20 DATED this 14th day of October, 2011.

21 ALBERT & TWEET, LLP

22
23
24 p:\bf\com\connollycom
25 bf3
26

By 
John D. Albert, OSB# 760418
Trial Attorney
of Attorneys for Plaintiff
jalbert@albertandtweet.com

PROMISSORY NOTE

\$446,020.37

Salem, Oregon

July 7, 2006

FOR VALUE RECEIVED, Charles A. Sides ("Borrower"), promises to pay the principal sum of Four Hundred Forty-Six Thousand Twenty and 37/100 Dollars (\$446,020.37) which is a combined debt to Connolly & Goldian, LLP, Defined Benefit Plan for \$233,535.28 (52.4%); Michele Marchetti for \$52,345.09 (11.7%); The Equity Trust Company Custodian FBO Paul R.J. Connolly IRA for \$66,300.00 (14.9%); and Jim Iverson for \$93,840.00 (21%) (collectively "Lenders"), which sums include two percent loan fee. Interest shall accrue on the unpaid principal balance from the date of this Note, until paid, at the rate of thirteen percent (13%). If not paid sooner, payment in full of this principal and interest is due on July 8, 2007. Interest shall be payable on a monthly basis, but shall be compounded on the due date into the loan and become principal on which interest at 13% shall be payable upon repayment of the loan. Both principal and interest shall be payable in the above-listed percentages to the Lenders, c/o Connolly & Goldian, LLP, Defined Benefit Plan, 2731 Twelfth St., SE, Salem, Oregon or such other place as the Lenders hereof may designate in writing.

The loan shall be repayable by Borrower with a minimum of 60 days notice, no less than ten (10) months from the date of this loan. Notice of repayment may include all or some of the principal and interest due on the loan.

If any installment under this Note is not paid when due, the entire principal and amount outstanding hereunder and accrued interest thereon shall at once become due and payable at the option of the Lenders hereof. Failure to exercise such option shall not constitute a waiver of the right to exercise such option if the undersigned is in default hereunder. In the event of any default in the payment of this Note, even if suit is not brought hereon, the Lenders hereof shall be entitled to collect all reasonable collection costs and attorney's fees, and if suit is brought, all reasonable costs and expenses of suit, including, but not limited to, reasonable attorney's fees in trial and appellate courts.

Borrower may repay the loan at any time, however, any repayment within the first six (6) months of the loan shall include as a prepayment penalty the interest that would have been earned had the loan been repaid six months from the date of the loan. In other words, interest will accrue and be due for a full six months on the loan even if the loan is paid off prior to six months. After six months, the loan may be repaid by Borrower by payment in full of all principal, interest and other amounts due.

Presentment, notice of dishonor, and protest are hereby waived by all makers, sureties, guarantors, and endorsers hereof. This Note shall be the joint and several obligation of all makers, sureties, guarantors and endorsers and shall be binding upon them and their heirs, personal representatives, successors, and assigns.

The indebtedness evidenced by this Note is secured by (a) a Pledge and Security Agreement for Borrower's one-third ownership interest (registered owner of 2500 shares of 7500 authorized shares of common stock of SCC Properties, Inc.); (b) Assignment Agreement (SCC Properties, Inc. Sales Proceeds) granting Borrower's right to proceeds from the sale of building and land located at 3710 Portland Rd NE, Salem, Oregon; and (c) an Assignment, Pledge and Security Agreement (Northwest National, LLC) for Borrower's 50% ownership interest in Northwest National, LLC.

By: 

Charles A. Sides

Exhibit 1

CONNOLLY & GOLDIAN, LLP DEFINED BENEFIT PLAN / INTERCREDITOR
CHARLES A. SIDES LOAN

Amortization Schedule: Normal Amortization

Interest shall be compounded on the due date into the loan and become principal on which 13% shall be payable

Annual Rate: 13.00%

Loan Date: 7/7/06

Due Date: 7/8/07

Loan Amount \$446,020.37

C&G, DBP

(52.4% rounded)

Marchetti

PRJC IRA

Iverson

(11.7% rounded)

(14.9% rounded)

(21% rounded)

Date	Payment Received	Interest Accrued	(52.359778993% rounded) (\$83.18/diem)	(11.736031248% rounded) (\$18.64/diem)	(14.864791937% rounded) (\$23.61/diem)	(21.039397819% rounded) (\$33.42/diem)	Balance
7/7/2006		\$4,831.89	233,535.28	52,345.09	66,300.00	93,840.00	446,020.37
8/7/2006		\$4,831.89	2,529.97	567.07	718.25	1,016.60	450,852.26
9/7/2006		\$4,831.89	2,529.97	567.07	718.25	1,016.60	455,684.15
10/7/2006		\$4,831.89	2,529.97	567.07	718.25	1,016.60	460,516.04
11/7/2006		\$4,831.89	2,529.97	567.07	718.25	1,016.60	465,347.93
12/7/2006		\$4,831.89	2,529.97	567.07	718.25	1,016.60	470,179.82
1/7/2007		\$4,831.89	2,529.97	567.07	718.25	1,016.60	475,011.71
2/7/2007		\$4,831.89	2,529.97	567.07	718.25	1,016.60	479,843.60
3/7/2007		\$3,177.13	1,663.54	372.87	472.27	668.45	483,020.73
2/27/2007	\$100,961.58		663.07	-	-	(101,624.65)	382,059.15
		\$37,000.36	253,571.66	56,687.46	71,800.03	-	382,059.15

Restated Principal 253,571.66 56,687.46 71,800.03 382,059.15

Restated Percentages 0.6636973873 0.14837352753 0.18792908514

3/7/2007	\$1,088.61	722.51	161.52	204.58	383,147.76
4/7/2007	\$4,138.97	2,747.02	614.11	777.83	387,286.73
5/7/2007	\$4,138.97	2,747.02	614.11	777.83	391,425.70
6/7/2007	\$4,138.97	2,747.02	614.11	777.83	395,564.67
7/7/2007	\$4,138.97	2,747.02	614.11	777.83	399,703.64

Restated Principal 265,282.26 59,305.44 75,115.94 399,703.64 Interest Compounded

7/30/2007 \$3,283.28 2,179.10 487.15 617.02 402,986.92

7/30/2007 \$50,000.00 (50,000.00) 352,986.92

\$57,928.13 267,461.37 59,792.59 25,732.96 352,986.92 Balance due

Restated Principal 267,461.37 59,792.59 25,732.96 352,986.92 Principal due

Restated Percentages 0.7577089993 0.16939038667 0.07290061399

8/7/2007	\$1,008.53	764.17	170.84	73.52	353,995.45
9/7/2007	\$3,824.02	2,897.49	647.75	278.77	357,819.47
10/7/2007	\$3,824.02	2,897.49	647.75	278.77	361,643.49
11/7/2007	\$3,824.02	2,897.49	647.75	278.77	365,467.51
12/7/2007	\$3,824.02	2,897.49	647.75	278.77	369,291.53

Exhibit 2

1/7/2008	\$3,824.02	2,897.49	647.75	278.77	373,115.55
2/7/2008	\$3,824.02	2,897.49	647.75	278.77	376,939.57
3/7/2008	\$3,824.02	2,897.49	647.75	278.77	380,763.59
4/7/2008	\$3,824.02	2,897.49	647.75	278.77	384,587.61
5/7/2008	\$3,824.02	2,897.49	647.75	278.77	388,411.63
6/7/2008	\$3,824.02	2,897.49	647.75	278.77	392,235.65
6/24/2008	\$2,137.26	1,619.42	362.03	155.81	394,372.91
		10,000.00	(10,000.00)		394,372.91
C&G purchase portion of MM principal					

Restated Principal		277,461.37	49,792.59	25,732.96	352,986.92
Restated Percentages		0.7860386610	0.14106072505	0.07290061399	Principal due
7/7/2008	\$1,686.76	1,325.86	237.94	122.97	396,059.67
8/7/2008	\$3,824.02	3,005.83	539.42	278.77	399,883.69
9/7/2008	\$3,824.02	3,005.83	539.42	278.77	403,707.71
10/7/2008	\$3,824.02	3,005.83	539.42	278.77	407,531.73
11/7/2008	\$3,824.02	3,005.83	539.42	278.77	411,355.75
11/24/2008	\$2,137.26	1,679.97	301.48	155.81	413,493.01
		9,000.00	(9,000.00)		413,493.01
C&G purchase portion of MM principal					

Restated Principal		286,461.37	40,792.59	25,732.96	352,986.92
Restated Percentages		0.8115353564	0.11556402959	0.07290061399	Principal due
12/7/2008	\$1,686.76	1,368.87	194.94	122.96	415,179.77
1/7/2009	\$3,824.02	3,103.33	441.92	278.77	419,003.79
2/7/2009	\$3,824.02	3,103.33	441.92	278.77	422,827.81
3/7/2009	\$3,824.02	3,103.33	441.92	278.77	426,651.83
4/7/2009	\$3,824.02	3,103.33	441.92	278.77	430,475.85
5/7/2009	\$3,824.02	3,103.33	441.92	278.77	434,299.87
6/7/2009	\$3,824.02	3,103.33	441.92	278.77	438,123.89
7/7/2009	\$3,824.02	3,103.33	441.92	278.77	441,947.91
7/31/2009	\$3,025.60	2,455.38	349.65	220.57	444,973.51
Amounts Due		358,396.58	54,138.10	32,438.83	444,973.51
7/31/2009		54,138.10	(54,138.10)		

Pd MM \$13,345.51 Int & \$40,792.59
 Principal; C&G acquired \$13,345.51 Int &
 \$40,792.59 Principal

Restated Principal		327,253.96	0.00	25,732.96	352,986.92
Restated Percentages		0.9271000000	-	0.07290000000	Principal due (\$125.72 interest per diem)
8/7/2009	\$798.42	740.22		58.20	445,771.93
9/7/2009	\$3,824.02	3,545.25		278.77	449,595.95
10/7/2009	\$3,824.02	3,545.25		278.77	453,419.97
11/7/2009	\$3,824.02	3,545.25		278.77	457,243.99
12/7/2009	\$3,824.02	3,545.25		278.77	461,068.01
1/7/2010	\$3,824.02	3,545.25		278.77	464,892.03
2/7/2010	\$3,824.02	3,545.25		278.77	468,716.05
3/7/2010	\$3,824.02	3,545.25		278.77	472,540.07

2
 10/10/10
 x

4/7/2010	\$3,824.02	3,545.25	278.77	476,364.09
5/7/2010	\$3,824.02	3,545.25	278.77	480,188.11
6/7/2010	\$3,824.02	3,545.25	278.77	484,012.13
7/7/2010	\$3,824.02	3,545.25	278.77	487,836.15
8/7/2010	\$3,824.02	3,545.25	278.77	491,660.17
9/7/2010	\$3,824.02	3,545.25	278.77	495,484.19
10/7/2010	\$3,824.02	3,545.25	278.77	499,308.21
11/7/2010	\$3,824.02	3,545.25	278.77	503,132.23
12/7/2010	\$3,824.02	3,545.25	278.77	506,956.25
1/7/2011	\$3,824.02	3,545.25	278.77	510,780.27
2/7/2011	\$3,824.02	3,545.25	278.77	514,604.29
3/7/2011	\$3,824.02	3,545.25	278.77	518,428.31
4/7/2011	\$3,824.02	3,545.25	278.77	522,252.33
5/7/2011	\$3,824.02	3,545.25	278.77	526,076.35
6/7/2011	\$3,824.02	3,545.25	278.77	529,900.37
7/7/2011	\$3,824.02	3,545.25	278.77	533,724.39
8/7/2011	\$3,824.02	3,545.25	278.77	537,548.41
9/7/2011	\$3,824.02	3,545.25	278.77	541,372.43

Exhibit 2
pg 3 of 3

PROMISSORY NOTE

\$1,050.00

Salem, Oregon

January 22, 2007

FOR VALUE RECEIVED, Charles A. Sides ("Obligor"), promises to pay to the order of Connolly & Goldian, LLP, Defined Benefit Plan ("Obligee") the principal sum of One Thousand Fifty Dollars (\$1,050.00) which consists of a loan for \$1,000.00 and a five percent origination fee of \$50.00, with interest on the unpaid principal balance from January 22, 2007, until paid, at the rate of twelve percent (12%) per annum (1% per month or fraction of a month). The principal and interest shall be payable to Connolly & Goldian, LLP, Defined Benefit Plan, 2731 12th St SE, PO Box 3095, Salem, OR 97302, upon demand in writing to Charles A. Sides, 245 13th NE, Salem, OR 97301, stating the amount owing.

If any payment under this Note is not paid when due, the entire principal and amount outstanding hereunder and accrued interest thereon shall at once become due and payable at the option of the holder hereof. Failure to exercise such option shall not constitute a waiver of the right to exercise such option if the undersigned is in default hereunder. In the event of any default in the payment of this Note, even if suit is not brought hereon, the holder hereof shall be entitled to collect all reasonable collection costs and attorney's fees, and if suit is brought, all reasonable costs and expenses of suit, including, but not limited to, reasonable attorney's fees in trial and appellate courts.

This note may be prepaid without penalty at any time.

Presentment, notice of dishonor, and protest are hereby waived by all makers, sureties, guarantors, and endorsers hereof. This Note shall be the joint and several obligation of all makers, sureties, guarantors and endorsers and shall be binding upon them and their heirs, personal representatives, successors, and assigns.

By: 
Charles A. Sides

NOTICE TO THE BORROWER
DO NOT SIGN THIS LOAN AGREEMENT BEFORE YOU READ IT.

Exhibit 4

PROMISSORY NOTE

\$6,300.00

Salem, Oregon


March 22, 2007

FOR VALUE RECEIVED, Charles A. Sides ("Obligor"), promises to pay to the order of Connolly & Goldian, LLP, Defined Benefit Plan ("Obligee") the principal sum of Six Thousand Three Hundred Dollars (\$6,300.00) which consists of a loan for \$6,000.00 and a five percent origination fee of \$300.00, with interest on the unpaid principal balance from March 22, 2007, until paid, at the rate of twelve percent (12%) per annum (1% per month or fraction of a month). The principal and interest shall be payable to Connolly & Goldian, LLP, Defined Benefit Plan, 2731 12th St SE, PO Box 3095, Salem, OR 97302, upon demand in writing to Charles A. Sides, 245 13th NE, Salem, OR 97301, stating the amount owing.

If any payment under this Note is not paid when due, the entire principal and amount outstanding hereunder and accrued interest thereon shall at once become due and payable at the option of the holder hereof. Failure to exercise such option shall not constitute a waiver of the right to exercise such option if the undersigned is in default hereunder. In the event of any default in the payment of this Note, even if suit is not brought hereon, the holder hereof shall be entitled to collect all reasonable collection costs and attorney's fees, and if suit is brought, all reasonable costs and expenses of suit, including, but not limited to, reasonable attorney's fees in trial and appellate courts.

This note may be prepaid without penalty at any time.

Presentment, notice of dishonor, and protest are hereby waived by all makers, sureties, guarantors, and endorsers hereof. This Note shall be the joint and several obligation of all makers, sureties, guarantors and endorsers and shall be binding upon them and their heirs, personal representatives, successors, and assigns.

By: 
Charles A. Sides

NOTICE TO THE BORROWER
DO NOT SIGN THIS LOAN AGREEMENT BEFORE YOU READ IT.

Exhibit 5

CONNOLLY & GOLDIAN, LLP DEFINED BENEFIT PLAN
SIDES LOAN (Cturn loans guaranteed by Sides)

Amortization Schedule: Normal Amortization

Nominal Annual Rate: 12.00%

Loan \$15,000 + \$750 fee = \$15,750.00

Loan Date: 12/13/06

Loan \$2,500 + \$125 fee = \$2,625.00 (PAID)

Loan Date: 1/11/07

Loan \$1,000 + \$50 fee = \$1,050.00

Loan Date: 1/22/07

Loan \$6,000 + \$300 fee = \$6,300.00

Loan Date: 3/22/07

<u>Date</u>	<u>Principal Balance</u>	<u>Payment</u>	<u>Interest Due</u>	<u>Principal Pd.</u>	<u>Interest Pd</u>	<u>Balance</u>
12/13/2006		(15,750.00)				15,750.00
1/11/2007	15,750.00	(2,625.00)		(2,625.00)		18,375.00
1/13/2007	18,375.00	-	157.50			18,532.50
1/22/2007	18,375.00	2,625.00		2,625.00		15,907.50
1/22/2007	15,750.00	(1,050.00)		(1,050.00)		16,957.50
2/13/2007	16,800.00	-	157.50			17,115.00
3/13/2007	16,800.00	-	168.00			17,283.00
3/22/2007	16,800.00			(6,300.00)		23,583.00
4/13/2007	23,100.00	-	168.00			23,751.00
5/13/2007	23,100.00	-	231.00			23,982.00
6/13/2007	23,100.00	-	231.00			24,213.00
7/13/2007	23,100.00	-	231.00			24,444.00
8/13/2007	23,100.00	-	231.00			24,675.00
9/13/2007	23,100.00	-	231.00			24,906.00
10/13/2007	23,100.00	-	231.00			25,137.00
11/13/2007	23,100.00	-	231.00			25,368.00
12/13/2007	23,100.00	-	231.00			25,599.00
1/13/2008	23,100.00	-	231.00			25,830.00
2/13/2008	23,100.00	-	231.00			26,061.00
3/13/2008	23,100.00	-	231.00			26,292.00
4/13/2008	23,100.00	-	231.00			26,523.00
5/13/2008	23,100.00	-	231.00			26,754.00
6/13/2008	23,100.00	-	231.00			26,985.00
7/13/2008	23,100.00	-	231.00			27,216.00
8/13/2008	23,100.00	-	231.00			27,447.00
9/13/2008	23,100.00	-	231.00			27,678.00
10/13/2008	23,100.00	-	231.00			27,909.00
11/13/2008	23,100.00	-	231.00			28,140.00
12/13/2008	23,100.00	-	231.00			28,371.00
1/13/2009	23,100.00	-	231.00			28,602.00
2/13/2009	23,100.00	-	231.00			28,833.00
3/13/2009	23,100.00	-	231.00			29,064.00
4/13/2009	23,100.00	-	231.00			29,295.00
5/13/2009	23,100.00	-	231.00			29,526.00
6/13/2009	23,100.00	-	231.00			29,757.00
7/13/2009	23,100.00	-	231.00			29,988.00
8/13/2009	23,100.00	-	231.00			30,219.00
9/13/2009	23,100.00	-	231.00			30,450.00
10/13/2009	23,100.00	-	231.00			30,681.00
11/13/2009	23,100.00	-	231.00			30,912.00
12/13/2009	23,100.00	-	231.00			31,143.00
1/13/2010	23,100.00	-	231.00			31,374.00
2/13/2010	23,100.00	-	231.00			31,605.00
3/13/2010	23,100.00	-	231.00			31,836.00

Exhibit

<u>Date</u>	<u>Principal Balance</u>	<u>Payment</u>	<u>Interest Due</u>	<u>Principal Pd</u>	<u>Interest Pd</u>	<u>Balance</u>
4/13/2010	23,100.00	-	231.00			32,067.00
5/13/2010	23,100.00	-	231.00			32,298.00
6/13/2010	23,100.00	-	231.00			32,529.00
7/13/2010	23,100.00	-	231.00			32,760.00
8/13/2010	23,100.00	-	231.00			32,991.00
9/13/2010	23,100.00	-	231.00			33,222.00
10/13/2010	23,100.00	-	231.00			33,453.00
11/13/2010	23,100.00	-	231.00			33,684.00
12/13/2010	23,100.00	-	231.00			33,915.00
1/13/2011	23,100.00	-	231.00			34,146.00
2/13/2011	23,100.00	-	231.00			34,377.00
3/13/2011	23,100.00	-	231.00			34,608.00
4/13/2011	23,100.00	-	231.00			34,839.00
5/13/2011	23,100.00	-	231.00			35,070.00
6/13/2011	23,100.00	-	231.00			35,301.00
7/13/2011	23,100.00	-	231.00			35,532.00
8/13/2011	23,100.00	-	231.00			35,763.00
9/13/2011	23,100.00	-	231.00			35,994.00

Exhibit 6

ASSIGNMENT, PLEDGE AND SECURITY AGREEMENT
(Northwest National, L.L.C.)

This ASSIGNMENT, PLEDGE AND SECURITY AGREEMENT ("Assignment") is made as of July 7, 2006, by CHARLES A. SIDES, as grantor and assignor ("Pledgor"), in favor of Connolly & Goldian, LLP, Defined Benefit Plan; Michele Marchetti; The Equity Trust Company Custodian FBO Paul R.J. Connolly IRA; and Jim Iverson (collectively "Lender"), whose address is c/o Connolly & Goldian, LLP, Defined Benefit Plan, 2731 12th St., SE, PO Box 3095, Salem, OR 97302.

RECITALS

A. Lender is entering into a loan transaction with CHARLES A. SIDES ("Borrower") and pursuant to a Promissory Note ("Promissory Note") for a loan of \$446,020.37 (the "Loan"). The Promissory Note and each related document are hereafter collectively referred to as the "Loan Documents."

B. In consideration of the credit and credit accommodations to be granted to the Borrower pursuant to the Loan and as an inducement to Lender for the Loan, the Pledgor is willing to grant to Lender, as collateral for the Loan, an assignment of and security interest in all of Pledgor's now owned and hereafter acquired member interests and member rights in NORTHWEST NATIONAL, L.L.C., an Oregon limited liability company (the "LLC") and including, but not limited to, all dividends, general intangibles related thereto, payments, dividends, compensation, dissolution distributions, subscription rights, liquidating dividends, fees, entitlements and distributions of income and proceeds from assets, sales and profits that are payable to Pledgor and that Pledgor may derive by and from the LLC, (collectively the "Pledged Interest").

C. Pledgor is one of two members in the LLC and the owner of 50% of the member interests in the LLC.

D. Lender is willing to make the Loan as requested by Borrower, in part in reliance upon the assignment of the Pledged Interest as provided in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of and in reliance on the above recitals and on making the Loan, Pledgor hereby covenants, agrees, warrants and represents as follows:

1. **Pledge.** The Pledgor hereby pledges, sells, assigns, sets over, transfers, and grants a security interest to Lender, in and to the Pledged Interest of the Pledgor under all documents and agreements of the LLC including, but not limited to, the articles of organization, operating agreement and any management, consulting agreements and compensation agreements with the LLC. The Pledged Interest is sometimes herein collectively referred to as the "Collateral." The assignment and security interests are given as security for payment when due of all payments and performances due to Lender of principal, interest and other costs and fees due pursuant to the Promissory Note and each other of the Loan Documents (collectively the "Indebtedness") and any renewals or extensions thereof.

2. **Perfection of Interest.** The Pledgor authorizes Lender to file a UCC financing statement, supplements thereto, or other instruments that Lender may, from time to time, reasonably require to perfect or preserve Lender's interests in the Collateral or the priority thereof.
3. **Enjoyment Prior to Default.** So long as no event of default ("Event of Default") has occurred under the Loan or for the Indebtedness, the Pledgor shall be entitled to receive, exercise, and retain all of the right, title and interest of the Pledgor in and to the Collateral.
4. **Indemnification.** Nothing herein shall be construed to obligate Lender to perform any of the Pledgor's obligations to the LLC or otherwise to impose any obligation on the Lender. The Pledgor shall indemnify and hold Lender harmless from any and all liability, loss, claims, damage, costs, expenses, or fees, including attorney's fees, which Lender may pay or incur in connection with the LLC by reason of this Assignment or the enforcement hereof, or by reason of any alleged obligation or undertaking to be discharged or performed by Lender in connection with the LLC or this Agreement. Should Lender pay or incur any liability, loss, claim, damage, cost, expense, or fee covered by this paragraph, the Pledgor, upon demand, shall immediately reimburse Lender for the entire amount thereof.
5. **Rights Upon Default.**
 - (a) Upon the occurrence of any uncured Event of Default for the Loan and 15 days after written notice thereof to Pledgor, at any time thereafter, Lender has, at Lender's option, full power and authority to demand, receive, exercise, or retain, upon notice to the LLC and the Pledgor, any or all of the right, title and interest of the Pledgor in and to all or part of the Collateral, and/or at its election, to sell, assign, transfer and deliver the whole of the Collateral or any part or portion thereof, or any additions thereof, or substitutes therefor, and/or apply the Collateral or the proceeds therefrom to the unpaid Indebtedness either in whole or in part, in such order as Lender may elect, as Lender, in its sole and absolute discretion may determine, without demand, advertisement, or notice of any kind whatsoever, after deducting all costs and expenses incurred by Lender in connection with such default. Lender shall have and may exercise all rights, powers and remedies available under the Oregon Uniform Commercial Codes, from all other laws and in equity. No right, power or remedy available to Lender is intended to be exclusive of any other available right, power or remedy, but each right, power and remedy shall be cumulative and shall be in addition to every other right, power and remedy available to Lender. Any forbearance, failure or delay by Lender in exercising any right, power or remedy shall not be deemed to be a waiver of any such right, power or remedy, and any single or partial exercise of any right, power or remedy shall not preclude the further exercise thereof; and every right, power and remedy of Lender shall continue in full force and effect until such right, power or remedy is specifically waived by an instrument in writing executed by Lender.
 - (b) If an Event of Default shall occur and be continuing under the terms of this Agreement or any other of the Loan Documents, Pledgor agrees to pay all reasonable attorney's fees and legal expenses incurred by or on behalf of Lender in enforcement of this Agreement, in exercising any remedy arising from such breach or default, or otherwise related to such breach or default. Pledgor additionally agrees to pay all reasonable costs and out-of-

pocket expenses, including, without limitation, (i) reasonable attorney's fees and legal expenses, (ii) advertising of sale of the Collateral, (iii) sale commissions, (iv) sales tax, (v) costs for improving or repairing the Collateral, and (vi) costs for preservation and protection of the Collateral, incurred by Lender in obtaining possession of Collateral, storage and preparation for sale, sale or other disposition, and otherwise incurred in foreclosing upon the Collateral. Any and all such costs and out-of-pocket expenses shall be payable by Pledgor upon demand, together with interest thereon from the date of the advance until repaid, both before and after judgment, at the default rate provided in the Note described in the Recitals, above.

- (c) Regardless of any breach or default, Pledgor agrees to pay all reasonable expenses, including reasonable attorney's fees and legal expenses, incurred by Lender in any bankruptcy proceedings of any type involving Pledgor, the Collateral, or this Agreement, including, without limitation, expenses incurred in modifying or lifting the automatic stay, determining adequate protection, use of cash collateral, or relating to any plan of reorganization.
- (d) Recoverable attorneys fees and legal expenses under the preceding two paragraphs include (without limitation) all costs and expenses of investigating any default and circumstances and events surrounding or relating thereto, fees charged by and expenses of professional consultants and advisers, including attorneys and accountants, costs of searching records, obtaining title reports, surveyor's reports, attorneys' opinions, title insurance costs, trustee's fees, and all other reasonable expenses incurred by the Lender that are necessary at any time in Lender's opinion for the protection of its interest and the enforcement of its rights; Attorneys' fees shall include costs and expenses of legal advice with respect to the event of default and rights and remedies of Lender, negotiations with the Borrower and any other parties in interest, attorneys' fees and expenses with respect to any action which Lender may commence or in which it might appear, whether for the purpose of protecting or preserving Lender's rights or to realize upon the lien of any security interest upon real or personal property, or both, by foreclosure or otherwise, and all attorneys' fees and expenses in any review of or appeal from any action and any other proceeding

6. **Continuance of Powers.** Until all Indebtedness shall have been paid or performed in full, all rights, remedies and powers granted to Lender hereunder or in connection herewith shall continue to exist and may be exercised by Lender at any time and from time to time irrespective of the fact that the Indebtedness or any part thereof may have become barred by any statute of limitations or that the liability of Pledgor may have ceased.

7. **Warranties and Covenants; No Modification of LLC.** The Pledgor represents and warrants to Lender that: (i) he is the owner of all right, title and interest of the Collateral; (ii) he has the right to assign and grant security interests in the Collateral upon the terms and conditions herein contained; (iii) the LLC is a duly organized, validly existing, limited liability company under the laws of Oregon with the power to own its assets and to transact business in Oregon and each other state where its business is conducted and the Articles of Organization and Operating Agreement of each LLC as provided to Lender are true and correct and in full force and effect; (iv) there is no outstanding assignment of, pledge of, or security interest concerning the Collateral; (v) the execution, delivery and performance of the Pledgor under this Agreement will

not violate any provision of any applicable law regulation, order, judgment, decree, articles of incorporation, bylaw, indenture, contract, operating agreement, article of organization, agreement or any other undertaking to which the Pledgor or the LLC are a party or which purports to be binding upon the Pledgor, the LLC or their assets; (vi) the Pledgor has not taken any action for or received any funds as advance payments due it by the LLC; and (vii) the Pledgor will not pledge, deliver, grant a security interest in, or assign any of the Collateral during the existence of the Indebtedness owing to Lender and any renewals or extensions thereof.

The Pledgor covenants and agrees that, so long as any of the Indebtedness is outstanding, the Pledgor: (i) shall not authorize or take any action to modify, amend, or terminate the LLC, or its articles of organization, operating agreements, or any rights and interest with respect to the Collateral or the Pledgor, or in any way alter the provisions thereof without first obtaining the written consent of Lender; (ii) shall not make any subsequent assignment or grant any security interest concerning the Collateral to any person other than Lender; and (iii) shall fulfill and discharge all obligations and duties of the Pledgor in the LLC and shall maintain said LLC in good standing and in full force and effect.

8. **Assignability and Duration.** Lender shall have the right to assign its rights under this Agreement to any holder of the Loan or to any person who, through foreclosure or otherwise, acquires an interest in the LLC or the property of the LLC as a result of the occurrence of an Event of Default. This Agreement shall remain in full force and effect, and the interests of the Lender in the Collateral shall continue to exist, so long as the LLC has obligations remaining due, owing, and outstanding under the Loan or any related loan document.
 9. **Interpretation.** The captions which precede the paragraphs of this Assignment are for convenience only and shall in no way affect the manner in which any provision hereof is construed. This Assignment shall be governed by and construed in accordance with the laws of the State of Utah without giving effect to conflict of law principles except that Oregon law shall apply to the perfection and the enforcement of liens and security interests granted and available for the Collateral.
 10. **Assignment Binding.** This Assignment shall be binding upon all parties, their respective heirs and legal representatives, and their successors and assigns.
 11. **Entire Agreement.** This Assignment contains the entire understanding of the parties hereto with respect to the transactions contemplated hereby and all prior agreements and understandings are merged into this Assignment. No change or modification to this Assignment shall be valid unless it is in writing and signed by the parties.
 12. **Lender Not Member or Partner.** The assignment hereunder is only of the Pledged Interest of the Pledgor and is not of any obligations of Pledgor as members in or for the LLC. Lender is not, in any manner or respect, a member, partner or joint venturer in or with the Pledgor or the LLC as a result of this Assignment.
 13. **Rights Cumulative.** The rights accorded Lender by this Assignment are in addition to, and not in substitution or limitation of, any right, remedy, power, or authority of Lender under the Loan or under any other instrument relating to the security for the Loan, at law, or in equity, now existing or hereafter arising. All rights, remedies, powers, or authorities of Lender are distinct and cumulative and may be exercised concurrently, independently, or successively and any such
- ASSIGNMENT, PLEDGE AND SECURITY AGREEMENT (Northwest National, L.L.C.) 4

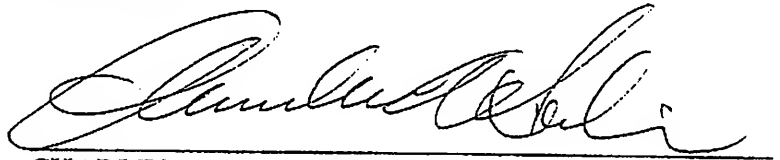
Exhibit 7

action shall not be deemed an election of remedies. Any Event of Default of the Borrower under the Loan or any related loan document or by Pledgor under this Assignment may, at Lender's sole option, be deemed a default under this Assignment. Lender shall have the right to enforce any one or more of the remedies provided hereunder, in any of the Loan Documents or by law or in equity and any such action by Lender shall not be deemed an election of remedies or otherwise prevent Lender from pursuing any further remedy it may have.

14. **Termination.** This Assignment shall terminate upon payment in full of all of Lender's obligations due and owing under the Loan.

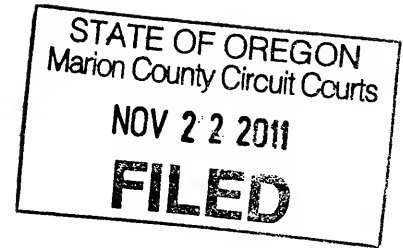
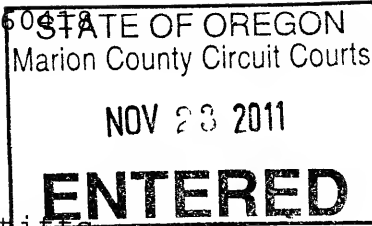
IN WITNESS WHEREOF, the Pledgor has caused this Assignment, Pledge and Security Agreement to be executed by authority duly given as of the date first above written.

PLEDGOR:


A handwritten signature in dark ink, appearing to read "Charles A. Sides", is written over a horizontal line.

CHARLES A. SIDES

1 John D. Albert, OSB# 760412
2 ALBERT & TWEET, LLP
3 242 Church St. SE
4 P.O. Box 968
5 Salem, OR. 97308
6 (503) 585-2056
7 of Attorneys for Plaintiffs



8 IN THE CIRCUIT COURT OF THE STATE OF OREGON

9 MARION COUNTY CASE NO. 11C22357

10	PAUL R.J. CONNOLLY, PC, DEFINED)	
11	BENEFIT PLAN, fka Connolly &)	
12	Goldian, LLP, Defined Benefit Plan, and)	
13	THE EQUITY TRUST COMPANY CUSTODIAN)	
14	FBO PAUL R. J. CONNOLLY, IRA,)	
15)	
16	Plaintiffs,	)	PLAINTIFFS'
17	vs.	)	EX PARTE
18		)	MOTION FOR DEFAULT
19	CHARLES A. SIDES,)	
20)	
21	Defendant.)	

22 Plaintiffs, Paul R. J. Connolly, PC Defined Benefit Plan, and
23 Equity Trust Company Custodian FBO Paul R. J. Connolly, IRA move
24 the Court, in accordance with ORCP 69, for an Order declaring
25 Defendant, Charles A. Sides, to be in default on the grounds that
26 said Defendant was duly served with Summons and Complaint herein on
27 October 17, 2011, and has failed to answer or otherwise appear
28 within the time prescribed by law, or at all. A notice of intent
29 to take default was provided pursuant to ORCP 69A(1) on November 7,

1 2011. A Declaration of Non-Military, Majority, and Capacity is
2 filed herewith.

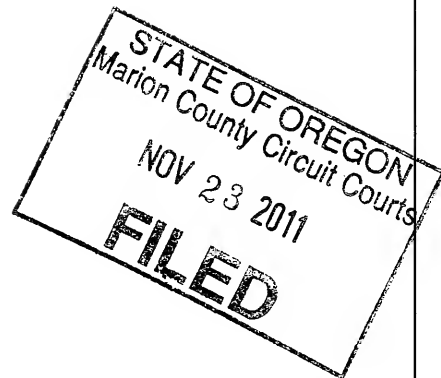
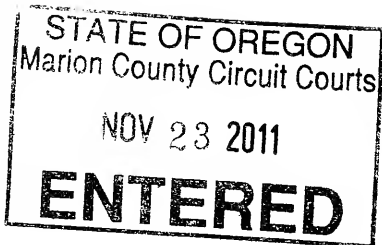
3 DATED this 22 day of November, 2011.

4 ALBERT & TWEET, LLP

5
6 By 

7 John D. Albert, OSB# 760418
8 of Attorneys for Plaintiffs
9 jalbert@albertandtweet.com

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**IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION**

PAUL R.J. CONNOLLY, PC, DEFINED
BENEFIT PLAN, fka Connolly & Goldian,
LLP, Defined Benefit Plan, and THE EQUITY
TRUST COMPANY CUSTODIAN FBO
PAUL R.J. CONNOLLY, IRA,

Plaintiffs,

vs.

CHARLES A. SIDES,

Defendant.

Case No.: 11C22357

DEFENDANT'S ANSWER

COMES NOW, Defendant, Charles A. Sides, by and through his attorney The Ghiorso
Law Firm, and appears and answers Plaintiffs' complaint as follows:

1.

Defendant denies paragraphs, 1, through 21 and the whole of Plaintiffs' Complaint
thereof.

2.

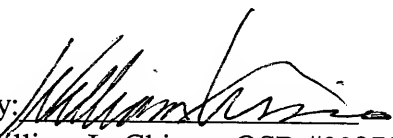
Except as expressly admitted herein, each and every paragraph of Plaintiffs' complaint is
denied in its entirety.

1 3.

2 Defendant reserves the right to amend and further plead, including affirmative defenses
3 and potential counterclaims upon further discovery.
4

5 WHEREFORE, having fully responded to Plaintiffs' Complaint, Defendant requests that
6 judgment be entered in his favor and against Plaintiffs on their claims along with judgment for
7 costs and disbursements incurred by Defendant.
8

9 DATED: November 23, 2011.
10

11
12 By: 
13 William L. Ghiorso, OSB #902706
14 The Ghiorso Law Firm
15 495 State Street, Suite 500
16 Salem, OR 97301
17 Ph: (503) 362 – 8966
18 Fax: (503) 362 – 1158
19
20
21
22
23
24
25

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of DEFENDANT'S ANSWER will be received by the following attorneys, by placement in US Mail, postage prepaid, addressed to the following attorney(s):

John Albert
Albert and Tweet
242 Church Street SE
Salem, OR 9730

Dated: November 23, 2011



William L. Ghiorso, OSB # 902706
ghiorsolawfirm@hotmail.com
The Ghiorso Law Firm
495 State Street, Suite 500
Salem, OR 97301
Phone: (503) 362 - 8966
Fax: (503) 362 - 1158
Attorney for Defendant

ENTERED

NOV 30 2011

Marion County Circuit Court

STATE OF OREGON
MARION COUNTY COURTS

NOV 30 2011

FILED
#31

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION

PAUL R.J. CONNOLLY, PC, DEFINED
BENEFIT PLAN, fka Connolly & Goldian,
LLP, Defined Benefit Plan, and THE EQUITY
TRUST COMPANY CUSTODIAN FBO
PAUL R.J. CONNOLLY, IRA,

Plaintiffs,

vs.

CHARLES A. SIDES,

Defendant.

Case No.: 11C22357

**DEFENDANT'S MOTION TO
SET ASIDE ORDER AND JUDGMENT
OF DEFAULT**

MOTION FOR LEAVE TO AMEND

(Oral Argument Requested)

COMES NOW, Defendant, Charles A. Sides, by and through his attorney The Ghiorso Law Firm, and moves the court, pursuant to ORCP 71, to set aside the order and judgment of default entered herein.

UTCR 5.010 Compliance

Counsel for Defendant made attempts to confer with Plaintiffs' counsel on Wednesday, November 23, 2011, by telephone calls. Plaintiffs' counsel communicated that he would confer with his client(s) as to Plaintiffs' position on this motion, and counsel for Defendant spoke to counsel for Plaintiffs on Monday, November 28, 2011, by telephone call, confirming that

1 Plaintiffs did not stipulate to setting aside the default entered in this matter. This motion
2 followed.

3
4 **ORAL ARGUMENT INFORMATION**

- 5 a) Estimated time for Oral Argument: 30 minutes.
6 b) Court Reporting Services: Requested.
7

8 **MOTION**

9 Defendants move the court to set aside the Order of Default entered herein based on
10 grounds of excusable neglect under ORCP 71(a), and supported by the below stated Points and
11 Authorities and Conclusions of Law, the attached declarations of counsel and Defendant, and the
12 court's file herein.
13

14 **POINTS AND AUTHORITIES**

15
16 ***Summary of Facts Supporting this Motion***

17 ***(A) Expedited Discovery Requests***

18 Counsel for plaintiffs initial and early discussions with counsel for defendant, focused on
19 an accelerated discovery schedule, all necessary, according to Plaintiffs' counsel to gain
20 additional information about the collateral Defendant offered to Plaintiffs to secure the alleged
21 obligations. (See Ghiorso Dec. at ¶ 1).

22 The document requests and subpoena duces tecum dated October 19, 2011, and
23 sponsored by Plaintiffs, seek extensive and voluminous personal, business, financial and legal
24 records, for the individual defendant herein and a non-party corporation, spanning not less than 5
25 years. (See Exhibits "A" and "B" attached to Ghiorso Dec.). (See Ghiorso Dec. at ¶ 2).

1 Counsel for Plaintiffs served a proposed motion for accelerated discovery timelines,
2 aimed at producing documents related to the alleged loan collateral immediately upon filing and
3 service of the complaint, and in advance of the time allowed for to answer Plaintiff's complaint.
4 (See Ghiorso Dec. at ¶ 3).

5 On behalf of the Defendant, counsel immediately contacted Plaintiffs' counsel, and at all
6 times indicated Defendant's willingness to voluntarily respond and cooperate with the extensive
7 and accelerated document requests, despite the procedural anomaly. (See Ghiorso Dec. at ¶ 4).

8 While the Defense was initially optimistic regarding estimates of the required turnaround
9 time in locating and producing said documents, the process became quite labor and time
10 intensive. It should be noted that only slightly more than 30 days has lapsed from the document
11 requests, and Defendant has started providing documents. This process has involved, inter
12 alia, retrieving responsive documents from a remote office in Southern Oregon and requesting
13 UCC records from the Office of the Oregon Secretary of State. (See Ghiorso Dec. at ¶ 5).

14 During the weeks following the document and records requests, Defense counsel
15 continuously communicated with Defendant and his staff regarding the status of their document
16 production efforts. Defense counsel was satisfied that a good faith effort was being made to be
17 responsive in a timely manner, given the scope of the document requests and the physical
18 location of said documents (See Ghiorso Dec. at ¶ 6).

19 Defense counsel actively participated in the management of this litigation, but as noted
20 above, the normal case process and litigation was continuing out of order at Plaintiffs' request,
21 causing the focus to be on satisfying plaintiffs' counsel's express and communicated immediate
22 need for discovery. (See Ghiorso Dec. at ¶ 7).

23 At no time in any correspondence or through telephone calls, except for the notice filed
24 with the court and further addressed below, did counsel for Plaintiff indicate Plaintiffs' intent to
25 apply to the court for a default judgment. (See Ghiorso Dec. at ¶ 8).

1 From the onset of the case, the practice of plaintiff's counsel was to e-mail the Defense
2 counsel's office copies of all pleadings. The initial pleadings were sent by e-mail on October 21,
3 2011, and included the complaint with exhibits; the request for production of documents; the
4 draft motion to shorten the time for discovery, with supporting declaration; and the subpoena
5 duces tecum. The notice of intent to default and the motion were not e-mailed to Defense
6 counsel. (See Ghiorso Dec. at ¶ 9).

7 Following the e-mailed pleadings, the only additional email received by Defense
8 counsel's office from counsel for Plaintiffs, (dated November 8, 2011, the day after the notice of
9 intent to default was filed) addressed only the discovery issues outlined above, and did not
10 mention the notice of intent to take a default. (See Ghiorso Dec. at ¶ 10).

11
12 ***(B) The Office's Calendaring System***

13 Between October 17, 2011 and November 2, 2011 Defense counsel's office lost the
14 services of two administrative assistants, both of which job responsibilities included calendaring
15 pleading matters in the office. (See Ghiorso Dec. at ¶ 11).

16 Defense counsel's office practice, through the beginning of the month of November,
17 2011, dictated that when a piece of mail with a legal deadline is received, a specific procedure is
18 followed to ensure the response dates contained on the paperwork is timely calendared as
19 follows: (a) First, the mail is retrieved by a legal assistant and date stamped at the counter, and
20 sorted amongst the various lawyers and office sub-tenants, including Defense counsel. (b)
21 Thereafter, the legal assistant opens all of the mail belonging to Defense counsel's office, and
22 places any mail containing deadlines in a basket for calendaring by an administrative assistant.
23 (c) Next, the administrative assistant would data entry the matter into the electronic file
24 management system in the office, i.e., "Clio Practice Management Software." (See Ghiorso Dec.
25 at ¶ 12).

1 The electronic calendar is then used to add dates to Defense counsel's personal calendar. (See
2 Ghiorso Dec. at ¶ 13).

3 This system, or a similar system, has been used by Defense counsel's office for 21 years,
4 and has never resulted in a default judgment being taken. (See Ghiorso Dec. at ¶ 14).

5 At the time in question, the two key persons with sole responsibility for sorting mail and
6 calendaring response deadlines as described above were in the process of separating from, or
7 were recently separated from Defense counsel's office. (See Ghiorso Dec. at ¶ 15).

8 Attributable to the loss of personnel, no calendar data entry into the computerized
9 database was occurring during the time in question. (See Ghiorso Dec. at ¶ 16).

10 Attributable to the loss of staff, and the associated absence of daily data entry into the
11 office electronic calendaring process, the notice of intent to take default was placed in the back
12 leaf of the client and case file, but was not calendared for response, either electronically or
13 otherwise. (See Ghiorso Dec. at ¶ 17).

14
15 ***(C) Reasonable Diligence After Discovery of the Default***

16 In the absence of staff, Defense counsel was sorting mail the day the ex-parte motion for
17 default was received by mail in Defense counsel's office. This was the first time Defense counsel
18 learned of Plaintiffs' counsel's intent to take such action in this matter. Neither the notice of
19 intent to default or the corresponding motion was e-mailed to Defense counsel's office as had
20 been the practice with all other pleadings. E-mailed documents do appear on Defense Counsel's
21 personal desk top computer which has the effect of immediately bringing the existence of such
22 documents to his attention. (See Ghiorso Dec. at ¶ 18).

23 Upon learning of the Plaintiff's motion, Defense counsel immediately contacted the court
24 clerk and was advised that the neither an order or judgment of default was reported as signed on
25 OJIN as of Wednesday 23, 2011. Therefore Defense counsel immediately, within the hour,

1 prepared a general answer and denial and filed the same with the court. (See Ghiorso Dec. at ¶
2 19).

3 Court staff from the presiding judge's office later notified Defense counsel's office that
4 an order of default had been earlier signed, but not yet entered in OJIN on this matter. (See
5 Ghiorso Dec. at ¶ 20).

6 Attempts to confer with counsel for Plaintiffs took through Monday, November 28,
7 wherein Plaintiffs' counsel advised Defense counsel that his client would not consent or stipulate
8 to setting aside the default. This motion followed. (See Ghiorso Dec. at ¶ 21).

9
10 ***(D) Meritorious Defense in Attached Pleading***

11 The Defendant is possessed of meritorious affirmative defenses and counter-claims
12 which when proven will show that a significant portion of the sums claimed as damages by
13 Plaintiff, allegedly loaned were not delivered to Defendant, and in fact that such delivery is
14 impossible now due to the negligence of the Plaintiff(s), or their agents. (See Ghiorso Dec. at ¶
15 22).

16 Attached as Exhibit "C" to the Ghiorso Declaration is a true and correct copy of the
17 proposed First Amended Answer; Affirmative Defenses; and Counterclaims. (See Ghiorso Dec.
18 at ¶ 23).

19
20 ***Legal Framework***

21 On motion and "upon such terms as are just," a court may relieve a party from a
22 judgment on the grounds of "mistake, inadvertence, surprise, or excusable neglect." ORCP 71
23 B(1)(a).

24 The courts "as a general rule" are more favorable to the defendant than to the plaintiff
25 when dealing with default. McAuliffe v. McAuliffe, 136 Or 168, 172, 298 P 239 (1931).

1 (b) A lawyer should avoid disparaging personal remarks or
2 acrimony toward opposing counsel, and should remain wholly
3 uninfluenced by any ill feeling between the respective clients.
(Emphasis Supplied).

4 Ainsworth v. Dunham, 235 Or 225, 231, 384 P2d 214 (1963).

5 Applying the facts of this case to the legal framework set forth above supports the court
6 setting aside the default judgment in this instance. First, the failure to respond was not
7 demonstrated to be an absence of lack of action on the matter by Defendant, but was rather due
8 to excusable neglect leading to a calendaring error. Second, the Defendant took immediate
9 action upon learning of the default, filing this motion the day after confirming Plaintiff's position
10 on the same. Third, Defendant has a meritorious defense, the merits of which should decide his
11 liability instead of a procedural error, consistent with longstanding judicial policy in Oregon.
12 Fourth, as highlighted by the above Ainsworth opinion, counsel for Defendant would have
13 expected a courtesy call prior to applying for a default given the previous exchange regarding
14 only discovery issues, as such courtesy has consistently been extended both by counsel for
15 Defendant and every adversary counsel for Defendant has ever litigated against in Marion
16 County.

17 **MOTION FOR LEAVE TO AMEND**

18 In light of the previously filed general denial and answer, in addition to setting aside the
19 default entered herein, Defendant further requests leave of the court to file an amended answer
20 with affirmative defenses, as set forth below. A draft of the proposed amended answer with
21 affirmative defenses is attached to this Motion. (See Exhibit 1 to Ghiorso Dec.)
22

23 //

24 //

25 //

1 When the ground of excusable neglect is asserted, the defaulted party must show, in
2 addition to excusable neglect, that the motion to set aside the judgment was brought within a
3 reasonable time, not to exceed one year, and that the party has a meritorious defense. National
4 Mortgage Company v. Robert C. Wyatt, Inc., 173 Or App 16, 20 P.3d 216 (Or App 2001) citing
5 Bella v. Aurora Air, Inc., 279 Or. 13, 17-18, 566 P.2d 489 (1977); see also Reitz v. Coca-Cola,
6 36 Or.App. 487, 492, 584 P.2d 791 (1978) (construing predecessor statute).

7 ORCP 71 B(1) (allowing trial court to relieve party from judgment for “excusable
8 neglect”) should be ““construed liberally to the end that every litigant shall have his day in court
9 and his rights and duties determined only after a trial upon the merits of the controversy.”” Wood
10 v. James W. Fowler Co., 168 Or App 308, 7 P3d 577 (2000) (quoting King v. Mitchell, 188 Or
11 434, 441–442, 214 P2d 993, 216 P2d 269 (1950)).

12 Notwithstanding the notice of intent to take a default contemplated in ORCP 69, which
13 provides an absolute defense to defaults taken without the contemplated official notice filed with
14 the court, where the parties are represented, typically the attorney seeking to secure a default
15 contacts the other lawyer before doing so. In Oregon, the Supreme Court quoted with approval
16 the following sections of the Code of Trial Conduct of the American College of Trial Lawyers:

17
18 13. The lawyer, and not the client, has the sole discretion to
19 determine the accommodations to be granted opposing counsel in
20 all matters not directly affecting the merits of the cause or
21 prejudicing the client’s rights, such as extensions of time,
22 continuances, adjournments and admission of facts. In such matters
no client has a right to demand that his counsel shall be illiberal or
that he do anything therein repugnant to his own sense of honor
and propriety.

23 14.(a) . . . *When he knows the identity of a lawyer representing an*
24 *opposing party, he should not take advantage of the lawyer by*
25 *causing any default or dismissal to be entered without first*
inquiring about the opposing lawyer’s intention to proceed.

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DATED: November 29, 2011.

By: William L. Ghiorso
William L. Ghiorso, OSB #902706
The Ghiorso Law Firm
495 State Street, Suite 500
Salem, OR 97301
Ph: (503) 362 – 8966
Fax: (503) 362 – 1158

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4
5 **IN THE CIRCUIT COURT OF THE STATE OF OREGON**
6 **FOR THE COUNTY OF MARION**
7

8 PAUL R.J. CONNOLLY, PC, DEFINED
9 BENEFIT PLAN, fka Connolly & Goldian,
10 LLP, Defined Benefit Plan, and THE EQUITY
11 TRUST COMPANY CUSTODIAN FBO
12 PAUL R.J. CONNOLLY, IRA,

13 Plaintiffs,

14 v.

15 CHARLES A. SIDES,

16 Defendant.

) Case No.: 11C22357

) **DEFENDANT'S FIRST AMENDED**
) **ANSWER; AFFIRMATIVE DEFENSES;**
) **AND COUNTERCLAIMS**

17 COMES NOW, Defendant, Charles A. Sides, by and through his attorney The Ghiorso
18 Law Firm, and appears and answers Plaintiffs' complaint as follows:

19 1.

20 Defendant denies paragraphs 5.

21 2.

22 Defendant admits paragraph 15 and 17.

23 3.

24 Defendant is without sufficient knowledge to admit or deny, and therefore denies
25 paragraphs 2, 4, 7, 8, 9, 10, 11, 12, 14, 19, 20, and 21

Exhibit C pg 1

1 4.

2 Defendant is without sufficient information to admit or deny, and therefore denies
3 paragraph, 1, except that he is a resident of Marion County.

4 5.

5 Defendant admits that the sum loaned on the note by Jim Iverson was paid in full, and is
6 without sufficient knowledge to admit or deny, and therefore denies the balance of paragraph 3
7 of Plaintiff's complaint.

8 6.

9 Defendant admits that the terms of the Note provide for 13% interest, but denies the
10 balance of paragraph 6.

11 7.

12 Defendant admits that the terms of the Note provide for 12% interest, but is without
13 sufficient information to admit or deny, and therefore denies the balance of paragraph 13.

14 8.

15 Defendant admits that Exhibit 7 is a true copy of a security agreement, and that it was
16 executed and delivered as set forth in paragraph 16, but denies the balance of the same.

17 9.

18 Defendant admits that the sum loaned on the note by Jim Iverson was paid in full, and is
19 without sufficient knowledge to admit or deny, and therefore denies the balance of paragraph 18
20 of Plaintiff's complaint.

21 10.

22 Except as expressly admitted herein, each and every paragraph of Plaintiffs' complaint is
23 denied in its entirety.

24 //

25 //

Exhibit C pg 2

11.

Defendant reserves the right to amend and further plead, including affirmative defenses and potential counterclaims upon further discovery.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to Deliver Funds)

For his First Affirmative Defense, Defendant alleges:

12.

Defendant realleges the admissions and denials set forth above, as applicable.

13.

The funds described in Plaintiff's complaint were to be specifically forwarded to a trust, to be protected from waste or conversion under the terms of the trust.

14.

Part of the sums sought to be advanced by Plaintiffs, or their assignors, were not delivered to Defendant as agreed upon by the parties. Defendant never received the full value of the loan funds due to the failed delivery of the funds.

SECOND AFFIRMATIVE DEFENSE

(Contributory Negligence)

For his Second Affirmative Defense, Defendant alleges:

15.

Defendant realleges the admissions and denials set forth above, as applicable.

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16.

The Plaintiffs' own carelessness and negligence proximately cause or contributed to the events, harm and/or damages complained of, if any there were, and either bars or proportionately reduces the relief prayed for by Plaintiffs herein.

THIRD AFFIRMATIVE DEFENSE
(Failure of Condition Precedent)

For his Third Affirmative Defense, Defendant alleges:

17.

Defendant realleges the admissions and denials set forth above, as applicable.

18.

Plaintiffs' duty to deliver funds into trust as agreed was a condition precedent to the obligation of Defendant to repay such sums or the interest and costs associated therewith. Plaintiffs' failure to deliver said sums as agreed either bars or proportionately reduces the relief prayed for by Plaintiffs herein.

FOURTH AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)

For his Fourth Affirmative Defense, Defendant alleges:

19.

Defendant realleges the admissions and denials set forth above, as applicable.

20.

Once the funds were improperly delivered, Plaintiffs, their assignors, and each of them, had a duty to mitigate the damages flowing from said improper delivery. Plaintiffs failure to mitigate those damages should either bar or proportionately reduce the relief prayed for by Plaintiffs herein.

COUNTER CLAIMS

DEFENDANT'S FIRST CLAIM FOR RELIEF

(Breach of Contract)

For his First Claim for Relief, Defendant alleges:

21.

Defendant realleges the admissions, denials, and allegations set forth above, as applicable.

22.

Plaintiffs, or their assignors, failed to complete or execute their duties under the contracts set forth in Plaintiffs' complaint, by failing to deliver all sums into trust as agreed by the parties.

23.

Defendant was damaged by Plaintiffs', or their assignors', breach of the loan agreements, when those improperly delivered sums were converted by a third party, which said conversion would have been impossible if the funds were properly delivered.

24.

Defendant is entitled to have his damages determined by a jury, but in no event less than \$150,000.00. Defendant reserves the right to amend his pleading after discovery is completed.

25.

Defendant is entitled to costs and disbursements, pursuant to ORCP 68, prevailing party fees pursuant to ORS 20.190, and Pre- and Post-judgment interest pursuant to ORS 82.010.

26.

Defendant is entitled to reasonable attorney fees pursuant to the exhibits in Plaintiffs' complaint, and ORS 20.083 and 20.096.

DEFENDANT'S SECOND CLAIM FOR RELIEF

(Negligence)

For his Second Claim for Relief, Defendant alleges:

27.

Defendant realleges the admissions, denials, and allegations set forth above, as applicable.

28.

With respect to delivering the funds as agreed upon under the contract, it then and there became the duty of Plaintiffs' or their assignors, to act with reasonable care in delivering those funds into trust.

29.

The Plaintiffs, or their assignors breached their duty of care to Defendant, in the following non-exclusive list of particulars:

a) in failing to deliver the funds into trust;

Exhibit C 28 6

- 1 b) in failing to promptly report to Defendant that part of the sums advanced were not
2 protected by the terms of the trust; and,
3 c) in failing to take remedial steps to recover said sums after they were not deposited
4 into trust.
5

6 30.

7 As a direct and proximate cause of Plaintiffs' actions as set forth herein, Defendant was
8 damaged in an amount to be proven by a jury, but in no event less than \$150,000.00. Defendant
9 reserves the right to amend his pleading after conducting further discovery.
10

11 31.

12 Defendant is entitled to costs and disbursements, pursuant to ORCP 68, prevailing party
13 fees pursuant to ORS 20.190, and Pre- and Post-judgment interest pursuant to ORS 82.010.
14

15 WHEREFORE, having fully responded to Plaintiffs' Complaint, Defendant requests that
16 judgment be entered in his favor and against Plaintiffs on their claims along with judgment for
17 costs and disbursements incurred by Defendant, and for the following relief:
18

19 FIRST CLAIM FOR RELIEF:

- 20 a) For economic damages, in an amount to be determined at trial, but in no event less than
21 \$150,000.00;
22 b) For prevailing party fees pursuant to ORS 20.190;
23 c) For pre- and post- judgment interest, pursuant to ORS 82.010;
24 d) For costs and disbursements pursuant to ORCP 68;
25 e) For reasonable attorneys fees pursuant to the agreements set forth in Plaintiff's complaint
and ORS 20.083 and ORS 20.096; and,
f) For such other relief as this court determines is just and equitable.

1 SECOND CLAIM FOR RELIEF:

- 2 a) For economic damages, in an amount to be determined at trial, but in no event less than
3 \$150,000.00;
4 b) For prevailing party fees pursuant to ORS 20.190;
5 c) For pre- and post- judgment interest, pursuant to ORS 82.010;
6 d) For costs and disbursements pursuant to ORCP 68;
7 e) For such other relief as this court determines is just and equitable.
8

9 DATED: This ____ day of _____, 2011.
10
11

12 By: _____
13 William L. Ghiorso, OSB #902706
14 The Ghiorso Law Firm
15 495 State Street, Suite 500
16 Salem, OR 97301
17 Ph: (503) 362 – 8966
18 Fax: (503) 362 – 1158
19
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25

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of DEFENDANT'S MOTION TO SET ASIDE ORDER AND JUDGMENT OF DEFAULT and MOTION FOR LEAVE TO AMEND will be received by the following attorneys, by placement in US Mail, postage prepaid, addressed to the following attorney(s):

John Albert
Albert and Tweet
242 Church Street SE
Salem, OR 9730

Dated: November 30, 2011



William L. Ghiorso, OSB # 902706
ghiorsolawfirm@hotmail.com
The Ghiorso Law Firm
495 State Street, Suite 500
Salem, OR 97301
Phone: (503) 362 - 8966
Fax: (503) 362 - 1158
Attorney for Defendant

ENTERED

NOV 30 2011

Marion County Circuit Court

STATE OF OREGON
MARION COUNTY COURTS

NOV 30 2011

FILED
#31

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION

PAUL R.J. CONNOLLY, PC, DEFINED
BENEFIT PLAN, fka Connolly & Goldian,
LLP, Defined Benefit Plan, and THE EQUITY
TRUST COMPANY CUSTODIAN FBO
PAUL R.J. CONNOLLY, IRA,
Plaintiffs,

v.

CHARLES A. SIDES,
Defendant.

Case No.: 11C22357

**DECLARATION OF WILLIAM L.
GHIORSO IN SUPPORT OF
DEFENDANT'S MOTION TO SET
ASIDE ORDER AND JUDGMENT OF
DEFAULT**

STATE OF OREGON)
) ss.
COUNTY OF MARION)

I, William L. Ghiorso, do declare:

1. I am the attorney of record for Defendant in this matter.
2. Counsel for plaintiffs initial and early discussions with myself, as counsel for defendant, focused on an accelerated discovery schedule, all necessary, according to Plaintiffs' counsel to gain additional information about the collateral Defendant offered to Plaintiffs to secure the alleged obligations.

3. The document requests and subpoena duces tecum dated October 19, 2011, and sponsored by Plaintiffs, seek extensive and voluminous personal, business, financial and legal records, for the individual defendant herein and a non-party corporation, spanning not less than 5 years. (See Exhibits "A" and "B" attached hereto).
4. Counsel for Plaintiffs served a proposed motion for accelerated discovery timelines, aimed at producing documents related to the alleged loan collateral immediately upon filing and service of the complaint, and in advance of the time allowed for to answer Plaintiff's complaint.
5. I on behalf of the Defendant, immediately contacted Plaintiffs' counsel, and at all times indicated Defendant's willingness to voluntarily respond and cooperate with the extensive and accelerated document requests, despite the procedural anomaly.
6. While initially receiving optimistic estimates of the required turnaround time in locating and producing said documents, the process became quite labor and time intensive. It should be noted that only slightly more than 30 days has lapsed from the document requests, and Defendant has started providing documents. This process has involved, inter alia, retrieving responsive documents from a remote office in Southern Oregon and requesting UCC records from the Office of the Oregon Secretary of State.
7. During the weeks following the document and records requests, I continuously communicated with Defendant and his staff regarding the status of their document production efforts. I was satisfied that a good faith effort was being made to be responsive in a timely manner, given the scope of the document requests and the physical location of said documents.
8. I have actively participated in the management of this litigation, but as noted above, the normal case process and litigation was continuing out of order at Plaintiffs' request,

1 causing the focus to be on satisfying plaintiffs' counsel's express and communicated
2 immediate need for discovery.

3 9. At no time in any correspondence or through telephone calls, except for the notice filed
4 with the court and further addressed below, did counsel for Plaintiff indicate Plaintiffs'
5 intent to apply to the court for a default judgment.

6 10. From the onset of the case, the practice of plaintiff's counsel was to e-mail my office
7 copies of all pleadings. The initial pleadings were sent by e-mail on October 21, 2011,
8 and included the complaint with exhibits; the request for production of documents; the
9 draft motion to shorten the time for discovery, with supporting declaration; and the
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11 to my office.

12 11. Following the e-mailed pleadings, the only additional email received by my office from
13 counsel for Plaintiffs, (dated November 8, 2011, the day after the notice of intent to
14 default was filed) addressed only the discovery issues outlined above, and did not
15 mention the notice of intent to take a default.

16 12. Between October 17, 2011 and November 2, 2011 my office lost the services of two
17 administrative assistants, both of which job responsibilities included calendaring pleading
18 matters in the office.

19 13. My office practice, through the beginning of the month of November, 2011, dictated that
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21 ensure the response dates contained on the paperwork is timely calendared as follows:
22 (a) First, the mail is retrieved by a legal assistant and date stamped at the counter, and
23 sorted amongst the various lawyers and office sub-tenants, including myself. (b)
24 Thereafter, the legal assistant opens all of the mail belonging to my office, and places any
25 mail containing deadlines in a basket for calendaring by an administrative assistant. (c)

1 Next, the administrative assistant would data entry the matter into the electronic file
2 management system in the office, i.e., "Clio Practice Management Software."

3 14. The electronic calendar is then used to add dates to my personal calendar.

4 15. This system, or a similar system, has been used by my office for 21 years, and has never
5 resulted in a default judgment being taken.

6 16. At the time in question, the two key persons with sole responsibility for sorting mail and
7 calendaring response deadlines as described above were in the process of separating
8 from, or were recently separated from my office.

9 17. Attributable to the loss of personnel, no calendar data entry into the computerized
10 database was occurring during the time in question.

11 18. Attributable to the loss of staff, and the associated absence of daily data entry into the
12 office electronic calendaring process, the notice of intent to take default was placed in the
13 back leaf of the client and case file, but was not calendared for response, either
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15 19. In the absence of staff, I was sorting mail the day the ex-parte motion for default was
16 received by mail in my office. This was the first time I learned of Plaintiffs' counsel's
17 intent to take such action in this matter. Neither the notice of intent to default or the
18 corresponding motion was e-mailed to my office as had been the practice with all other
19 pleadings. E-mailed documents do appear on my desk top computer at my desk which
20 has the effect of immediately bringing the existence of such documents to my attention.

21 20. Upon learning of the Plaintiff's motion, I immediately contacted the court clerk and was
22 advised that the neither an order or judgment of default was reported as signed on OJIN
23 as of Wednesday 23, 2011. Therefore I immediately, within the hour, prepared a
24 general answer and denial and filed the same with the court.
25

1 21. Court staff from the presiding judge's office later notified my office that an order of
2 default had been earlier signed, but not yet entered in OJIN on this matter.

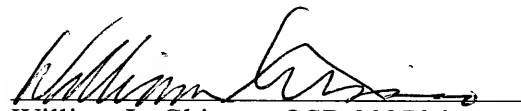
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4 wherein Plaintiffs' counsel advised me that his client would not consent or stipulate to
5 setting aside the default. This motion followed.

6 23. The Defendant is possessed of meritorious affirmative defenses and counter-claims
7 which when proven will show that a significant portion of the sums claimed as damages
8 by Plaintiff, allegedly loaned were not delivered to Defendant, and in fact that such
9 delivery is impossible now due to the negligence of the Plaintiff(s), or their agents.

10 24. Attached as Exhibit "C" to this Declaration is a true and correct copy of the proposed
11 First Amended Answer; Affirmative Defenses; and Counterclaims.

12
13 I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE
14 BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT
15 IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO
16 PENALTY FOR PERJURY.

17 DATED: November 29, 2011.

18 
19 William L. Ghiorso, OSB 902706
20 Attorney for Defendant
21
22
23
24
25

1 JOHN D. ALBERT, OSB# 760418
2 ALBERT & TWEET, LLP
3 242 Church St. SE
4 PO Box 968
5 Salem, OR 97308
6 (503)585-2056
7 of Attorneys for Plaintiffs

8 IN THE CIRCUIT COURT OF THE STATE OF OREGON

9 MARION COUNTY CASE NO. 11C22357

10	PAUL R.J. CONNOLLY, PC, DEFINED)	
11	BENEFIT PLAN, fka Connolly &)	
12	Goldian, LLP, Defined Benefit Plan, and)	
13	THE EQUITY TRUST COMPANY CUSTODIAN)	
14	FBO PAUL R. J. CONNOLLY, IRA,)	
15)	
16		)	PLAINTIFFS' FIRST
17		)	REQUEST FOR PRODUCTION
18	v.	)	OF DOCUMENTS FROM
19	CHARLES A. SIDES,	)	DEFENDANT
20)	
21	Defendant.)	

22 TO: CHARLES A. SIDES, hereinafter "Requestee"

23 Pursuant to ORCP 36 and 43, Plaintiffs, Paul R.J. Connolly, PC, Defined Benefit Plan, fka
24 Connolly & Goldian, LLP, Defined Benefit Plan, and The Equity Trust Company Custodian FBO Paul
25 R. J. Connolly, IRA, hereinafter "Requestors," by and through their counsel, Albert & Tweet, LLP,
26 request that Requestee produce on December 1, 2011, or such earlier date as the court may order, the
27 documents described below for inspection and copying at the Law Office of Albert & Tweet, LLP, 242

**Page 1 - PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS FROM
DEFENDANT**

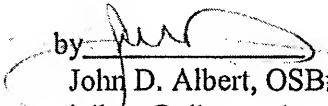
ALBERT & TWEET, LLP
PO Box 968
Salem, OR 97308
(503) 585-2056
Fax (503) 371-2649

Exhibit A pg 1

1 Church St. SE, Salem, Oregon, or said production may be made by delivering personally or by mailing
2 true, complete and legible copies of the documents and things requested to 242 Church St. SE, PO Box
3 968, Salem, Oregon 97308. This request shall be continuing in nature and shall apply to any requested
4 documents discovered or in existence subsequent to date of production.

5 Dated this 18th day of October, 2011.

6 ALBERT & TWEET, LLP

7 by 
8 John D. Albert, OSB# 760418
9 jalbert@albertandtweet.com
10 of Attorneys for Plaintiffs

11 p:\bf\connolly\Krfp

**Page 2 - PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS FROM
DEFENDANT**

ALBERT & TWEET, LLP
PO Box 968
Salem, OR 97308
(503) 585-2056
Fax (503) 371-2649

Exhibit A pg 2

1 **I. INSTRUCTIONS AND DEFINITIONS.**

2 1. "Person" means a natural person or corporation, partnership, or other business entity.

3 2. "Requestee," "you" or "your" means, unless otherwise specified, the named Charles A.
4 Sides, and any person acting or purporting to act on behalf of Requestee, including, by way of
5 illustration and without limitation, any of Requestee's affiliates, attorneys, officers, directors, staff,
6 employees or agents.

7 3. As used in these discovery requests, "Complaint" shall mean the complaint filed by
8 Plaintiff in this action.

9 4. "And" as well as "or" shall be construed either disjunctively or conjunctively as
10 necessary to bring within the scope of these interrogatories and document requests any information
11 which might otherwise be construed to be outside their scope.

12 5. The terms "relate to," "relating to," "concerning" or "regarding" mean supports,
13 evidences, describes, mentions, refers to, contradicts, or comprises.

14 6. As used in these discovery requests, the term "communication" means the transmittal
15 of information in the form of facts, ideas, inquiries, or otherwise, whether by person, telephone, written
16 correspondence, email, facsimile, or telex, and includes all meetings, discussions, representations,
17 contacts, letters, memoranda, correspondence, reports, statements, consultations and negotiations.

18 7. As used in these discovery requests, "document" or "documents" includes any writing
19 of any kind, including originals and non-identical copies, whether different from the original solely by
20 reasons of notation, annotation, or handwriting of any kind made on such copies or otherwise, including
21 without limitation all communications, correspondence, memoranda, notes, records, reports, drafts, desk
22 calendars, diaries, statistics, letters, minutes of meetings, books, papers, computations, schedules, lists,
23 checks, recordings, blueprints, invoices, statements, receipts, summaries, pamphlets, inter-office and
24 intra-office communications, bulletins, microfilm, motion pictures, videos, slides, photographs,
25 sketches, charts, graphs, computer printouts, e-mails, teletypes, telefaxes, work sheets, computer storage
26 media such as diskettes or tapes, or other similar objects or written or printed matter or tangible thing
27 on which words or phrases are affixed, including all documents prepared by agents, representative,
28 attorneys, accountants, or employees of Requestee for his or her own use or for transmittal in any
29 manner or were received by any means by any person.

30 8. If any document identified in a Request for Production was, but no longer is, in your
31 possession, custody or control, or was known to you but is no longer in existence, state

**Page 3 - PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS FROM
DEFENDANT**

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Salem, OR 97308
(503) 585-2056
Fax (503) 371-2649

Exhibit A pg 3

1 what became of it. No document requested to be produced herein should be destroyed or disposed of
2 by virtue of a record retention program or for any other reason.

3 9. If any document, communication, or other information responsive to this discovery is
4 claimed to be privileged or withheld from production for any reason, describe said information to the
5 fullest extent possible, including but not limited to: the nature of the information and general character
6 of the document; the date of the communication or document; the name and address of the sender,
7 author and all recipients of the document or communication; and the specific basis upon which the
8 document or communication is considered to be privileged or protected from discovery.

9 10. These discovery requests are deemed continuing in nature. If additional information
10 or documents come to you or your attorney's attention or possession at any time during the course of
11 litigation, your response must be supplemented as required by the Oregon Rules of Civil Procedure.

12 11. If a request herein is objected to, you must provide the reasons for the objection in full,
13 identify the particular portion of the request to which you object, and respond to the remainder of the
14 discovery request that is not objectionable.

15 12. In responding to these Requests for Production, Requestee shall furnish not only such
16 information as is available to them when answering these discovery requests, but also all such
17 information as is known to any employee, representative, or agent of Requestee, including Requestee's
18 attorneys, unless such information is claimed to be privileged from discovery.

19 13. Upon producing any document, you are requested to indicate in an appropriate manner
20 which of the following numbered paragraphs describe each of the documents produced.
21

**Page 4 - PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS FROM
DEFENDANT**

**ALBERT & TWEET, LLP
PO Box 968
Salem, OR 97308
(503) 585-2056
Fax (503) 371-2649**

Exhibit A pg 4

1 **II. SPECIFIC REQUESTS.**

2 **REQUEST NO. 1:** The operating agreement and any amendments or revisions to the operating
3 agreement for Northwest National, LLC.

4 **RESPONSE:**

5 **REQUEST NO. 2:** All documents evidencing the ownership or changes in the ownership of
6 Northwest National, LLC.

7 **RESPONSE:**

8 **REQUEST NO. 3:** All documents relating to the creation and status of all liens or other security
9 interests against the assets of Northwest National, LLC.

10 **RESPONSE:**

11 **REQUEST NO. 4:** All documents relating to the creation and status of all liens or other security
12 interests against your membership-ownership interest in Northwest National, LLC.

13 **RESPONSE:**

14 **REQUEST NO. 5:** Northwest National, LLC financial statements, including year-end income
15 statements and balance sheets, for the years 2007, 2008, 2009, and 2010, and year to date statements
16 for 2011.

17 **RESPONSE:**

**Page 5 - PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS FROM
DEFENDANT**

ALBERT & TWEET, LLP
PO Box 968
Salem, OR 97308
(503) 585-2056
Fax (503) 371-2649

Exhibit A pg 5

REQUEST NO. 6: Northwest National, LLC's entire tax returns, including K-1 schedules for each member, for the years 2007, 2008, 2009, and 2010.

RESPONSE:

REQUEST NO. 7: All communications among the members of Northwest National, LLC concerning the Assignment, Pledge and Security Agreement dated July 7, 2006, which Charles A. Sides granted to the Connolly & Goldian, LLP, Defined Benefit Plan (k.n.a Paul R.J. Connolly, PC, Defined Benefit Plan) and other creditors.

RESPONSE:

REQUEST NO. 8: All financial statements submitted or used in support of any loan or credit applications made by Northwest National, LLC since the beginning of 2007.

RESPONSE:

REQUEST NO. 9: Charles A. Sides' personal tax returns, including schedules, K-1s, 1099s and W-2s, for the years 2007, 2008, 2009, and 2010.

RESPONSE:

REQUEST NO. 10: All communication or negotiations with secured creditors of Northwest National, LLC for the years 2009, 2010, and 2011.

RESPONSE:

Page 6 - PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS FROM DEFENDANT

ALBERT & TWEET, LLP
PO Box 968
Salem, OR 97308
(503) 585-2056
Fax (503) 371-2649

Exhibit A pg 6

REQUEST NO. 11: Any documents evidencing or relating to any and all payments of money or things of value from Northwest National, LLC to Charles A. Sides or to any other member of Northwest National, LLC between 2004 and the present.

RESPONSE:

REQUEST NO. 12: Any agreements between Northwest National, LLC and any of its members concerning payments, distributions, capital calls, assumptions of debts and/or assumptions of interest.

RESPONSE:

REQUEST NO. 13: All documents reflecting the capital accounts of the members of Northwest National, LLC from 2004 to the present.

RESPONSE:

REQUEST NO. 14: All documents and correspondence received by you from any Plaintiff named in the Complaint in this action, or any of its predecessors-in-interest, members or agents.

RESPONSE:

**Page 7 - PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS FROM
DEFENDANT**

**ALBERT & TWEET, LLP
PO Box 968
Salem, OR 97308
(503) 585-2056
Fax (503) 371-2649**

Exhibit A pg 7

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION

PAUL R.J. CONNOLLY, PC, DEFINED)
BENEFIT PLAN, fka Connolly &)
Goldian, LLP, Defined Benefit Plan, and)
THE EQUITY TRUST COMPANY CUSTODIAN)
FBO PAUL R. J. CONNOLLY, IRA) CASE NO. 11C22357
Plaintiffs,) CIVIL SUBPOENA
vs.) (Duces Tecum)
Charles A. Sides,)
Defendant.)

TO: Northwest National, LLC, Custodian of Records, c/o Charles A. Sides, its Registered Agent, 245 13th St. NE, Salem, OR 97301;

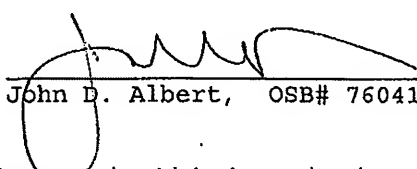
You hereby are required to appear* at the offices of Albert & Tweet, LLP, 242 Church St. SE, Salem, Oregon on the 31st day of October, 2011, at 9:00 o'clock A.M., to testify as a witness in the above entitled cause on behalf of the following named party(ies): Plaintiff, and to remain until the testimony is closed unless you are sooner discharged. At the end of each day's attendance you may demand of said party(ies) or their attorney the payment of legal witness fees for the next following day and if not then paid, you are not obligated to remain longer in attendance.

You are commanded to produce to 242 Church St. SE, PO Box 968, Salem, OR 97308, on or before the time listed above the following documents: See attached list.

Dated: October 20, 2011

**Issued by:

*In lieu of appearance, copies of the requested documents may be produced on or before the date noted above to the address noted above.


John D. Albert, OSB# 760418

**A subpoena may be issued in blank by the clerk of the court in which the action is pending, or if there is no clerk, then by a judge or justice of such court; or it may be issued by an attorney of record of the party to the action in whose behalf the witness is required to appear. See ORCP Rule 55C.(1)

I hereby certify that the foregoing is a complete and exact copy of the original subpoena in the above entitled cause as the same appears in my hands for service.

If an officer, state title

Witness fee \$30.00

Mileage \$1.00

Total: \$31.00

STATE OF OREGON, County of _____ ss:

I hereby certify that I served the within subpoena on the _____ day of _____, 20__, on the within-named _____ by delivering to

him/her a copy thereof personally and giving or offering to him/her at the same time the fees and mileage (see opposite) to which he/she is entitled for travel to and from the place designated in said subpoena and one day's attendance; that I am a competent person over the age of 18 years.

John D. Albert
242 Church St. SE
Salem, OR 97301 phone: (503) 585-2056
Name, address and telephone number of attorney for party in whose behalf the witness is required to appear

Exhibit B pg 1

p:\bf\connollysubpoena

DOCUMENTS REQUESTED

REQUEST NO. 1: The operating agreement and any amendments or revisions to the operating agreement for Northwest National, LLC.

REQUEST NO. 2: All documents evidencing the ownership or changes in the ownership of Northwest National, LLC.

REQUEST NO. 3: All documents relating to the creation and status of all liens or other security interests against the assets of Northwest National, LLC.

REQUEST NO. 4: All documents relating to the creation and status of all liens or other security interests against membership-ownership interests in Northwest National, LLC.

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REQUEST NO. 12: Any agreements between Northwest National, LLC and any of its members concerning payments, distributions, capital calls, assumptions of debts and/or assumptions of interest.

REQUEST NO. 13: All documents reflecting the capital accounts of the members of Northwest National, LLC from 2004 to the present.

CG

STATE OF OREGON
Marion County Circuit Courts
DEC 16 2011
ENTERED

STATE OF OREGON
Marion County Circuit Courts
DEC 15 2011
FILED

IN THE CIRCUIT COURT OF THE STATE OF OREGON

MARION COUNTY CASE NO. 11C22357

PAUL R.J. CONNOLLY, PC, DEFINED)	
BENEFIT PLAN, fka Connolly &)	
Goldian, LLP, Defined Benefit Plan, and)	
THE EQUITY TRUST COMPANY CUSTODIAN	)	PLAINTIFFS' RESPONSE
FBO PAUL R. J. CONNOLLY, IRA,	)	TO MOTION TO SET ASIDE
	)	ORDER AND JUDGMENT OF
Plaintiffs,	)	DEFAULT, MOTION FOR
	)	LEAVE TO AMEND
v.)	
)	
)	
CHARLES A. SIDES,)	
)	
Defendant.)	

I.

INTRODUCTION.

COME NOW Plaintiffs Paul R.J. Connolly , PC, Defined Benefit Plan, fka Connolly & Goldian, LLC, Defined Benefit Plan ("DBP Plaintiff") and The Equity Trust Company Custodian FBO Paul R.J. Connolly, IRA ("IRA Plaintiff")(together, "Plaintiffs") and files this Response in Opposition to Defendant's Motion to Set Aside Order and Judgment of Default and Motion for Leave to Amend.

This response in opposition is supported by the pleadings and papers on file, the memorandum below, and the Declaration of John Albert filed herewith.

1 II.

2 MEMORANDUM.

3 **A. Standard of Review.**

4 Although disposition of motion for relief from judgment on
5 ground of mistake, inadvertence, surprise or excusable neglect is
6 committed to the court's discretion, that discretion is controlled
7 by fixed legal principles. *Financial Indem. Co. v. Bevans*, 38 Or
8 App 369, 590 P2d 276 (1979).

9 **B. Undisputed Facts.**

10 Defendant Sides was served with the summons and complaint by
11 office service on October 14, 2011, which service was completed by
12 mailing on October 17, 2011.

13 It is undisputed that on November 7, 2011, Plaintiffs mailed
14 to Defendant's counsel Plaintiffs' Notice of Intent to Take Default
15 Judgment. The notice stated Plaintiffs' intent to apply for a
16 default judgment if Defendant failed to answer or otherwise defend
17 within 10 days of the date of the notice. The notice complied with
18 ORCP 69A and UTCR 2.010.¹

19 It is undisputed that Defendant's counsel received Plaintiffs'
20 Notice of Intent to Take Default Judgment. See Ghiorso Decl. ¶ 18

¹ORCP 69A(1) requires that such a notice be provided to counsel who "has filed an appearance to the party seeking an order of default...." Defendant's counsel actually did neither. See Declaration of John Albert, ¶5. Hence, Plaintiffs were not even required to file and serve the ten-day notice but did so as a matter of professional courtesy.

1 ("the notice of intent to take default was placed in the back leaf
2 of the client and case file").

3 It is undisputed that Defendant did not file an answer or
4 otherwise defend by November 22, 2011, more than 10 days after the
5 date of Plaintiffs' notice. Accordingly, Plaintiffs filed for an
6 order of default and judgment on default on November 22, 2011. An
7 Order of Default was signed by Presiding Judge James Rhoades later
8 that day.

9 It is further undisputed that during these relevant times,
10 Defendant's counsel was responsible for the opening and sorting
11 mail. Ghiorso Decl. ¶ 19 ("In the absence of staff, I was sorting
12 mail the day the ex-party motion for default was received by mail
13 in my office.").

14 **C. Defendant Has Failed to Establish Excusable Neglect.**

15 Defendant claims that the above facts, along with other facts
16 stated in the declaration of counsel, establish "excusable neglect"
17 as that term is used in ORCP 71 B. Defendant's counsel's
18 declaration establishes that, due to a loss of staff, necessary
19 deadlines were not placed in counsel's practice management
20 software, and the Notice of Intent to Take Default, while
21 admittedly received, was apparently not read by counsel before it
22 was placed in the file.

23 However, counsel's declaration omits several important
24 details, and these omissions raise several questions that remain

1 unaddressed in Defendant's motion. Counsel contends that his
2 efforts were focused on Defendant's discovery obligations² rather
3 than on filing an appearance to avoid default. Counsel also admits
4 that Plaintiffs' Notice of Intent to Take Default did in fact make
5 it into Defendant's case file. Counsel does not state who placed
6 it there, but somehow, in the absence of staff, it appeared in the
7 file. Given that counsel has identified no other person who may
8 have opened the mail at the time the Notice of Intent to Take
9 Default was delivered, the only conclusion to be reached is that it
10 was Defendant's counsel himself who opened the mail and placed the
11 Notice in the file. See Ghiorso Decl. ¶19.

12 Also absent from counsel's declaration is any attempt to
13 explain why, if the Notice of Intent to Take Default was in the
14 client's file, it was nevertheless unseen for more than two weeks.
15 Counsel does not indicate how many times he consulted his file, but
16 it must be assumed that because counsel was "continuously
17 communicat[ing] with Defendant and his staff regarding the status
18 of their document production efforts," and was "actively
19 participat[ing] in the management in this litigation" that counsel
20 certainly must have consulted his file several times during the
21 relevant time period. See Ghiorso Decl. ¶¶ 7 and 8. All of this
22 begs the question: if the Notice was in the file, how did counsel
23 fail to see it?

²On October 18, 2011, Defendant Sides was personally served with a Plaintiffs' First Request for Production. Declaration of John Albert, ¶3.

1 All of these admissions establish that the error in failing to
2 respond to Plaintiffs' Notice of Intent to Take Default was the
3 result of Defendant's counsel's neglect. "It is well settled that
4 the negligence of an attorney who acts within the scope of his
5 authority will be imputed to his client." *Longyear v. Edwards*, 217
6 Or 314, 319, 342 P2d 762 (1959) (citing Thornton on Attorneys at
7 Law, Vol. 1, Page 561, § 318; 5 Am Jur 305, 306 § 78; *Brand v.*
8 *Baker*, 42 Or 426, 433-435, 71 P 320 (1903)).

9 "Ordinarily a party will not be relieved from a judgment or
10 decree taken against him through the mistake, negligence, or
11 inadvertence of his attorney, unless the act or omission of the
12 attorney was such that, had it been committed or omitted by the
13 party himself, he would be entitled to a vacation of the judgment
14 or decree..." *Longyear*, 217 Or at 319 (quoting *Carlson v. Bankers'*
15 *Discount Corp.*, 107 Or 686, 695, 215 P 986 (1923); *Brand v. Baker*,
16 42 Or 426, 434, 71 P 320 (1903)).

17 While it is undisputed that Defendant has demonstrated that
18 his failure to answer or otherwise defend in the time required by
19 law was the result of neglect; however, Defendant has failed to
20 carry his burden that the neglect was excusable. Defendant's
21 counsel could have at any time between November 8, 2011 and
22 November 22, 2011 read Plaintiffs' Notice of Intent to Take Default
23 and take appropriate steps to avoid default. Indeed, given the
24 claimed diligence with which counsel was attending to Defendant's

1 discovery obligations, there are presumably a handful of occasions
2 where Defendant's case file was handled, yet no explanation as to
3 how counsel failed to see the Notice. Indeed, it appears that the
4 Notice was originally opened handled by counsel and placed in
5 Defendant's file, as Defendant's counsel has identified no other
6 possible person who could have placed it there. Ghiorso Decl. ¶19.

7 Defendant's protestation that Plaintiffs did not also email
8 the Notice to Defendant's counsel is a red herring. At no time did
9 Defendant's counsel request that all documents served on him via
10 mail also be served via email [Declaration of John Albert ¶4]. Nor
11 was there any "practice" of emailing pleadings to Mr. Ghiorso.
12 There was only a single email of pleadings on the date of counsel's
13 initial telephone conference, made to enable counsel to "get up to
14 speed". Declaration of John Albert, ¶¶3 and 4. Further, under the
15 Oregon Rules of Civil Procedure, absent a written stipulation
16 between the parties, service via email is prohibited. ORCP 9 G
17 ("Service by e-mail is prohibited unless attorneys agree in writing
18 to e-mail service."). There is no such written stipulation between
19 counsel in this case. [Declaration of John Albert ¶4]. Thus,
20 Defendant's counsels reliance solely on email during the time when
21 he lacked office staff to calendar mail is inexcusable as a matter
22 of law.

23 Defendant's citation to Section 14(a) of the Code of Trial
24 Conduct of the American Code of Trial Lawyers does not aid

1 Defendant's argument. That rule simply requires a lawyer to
2 "inquire about the opposing lawyer's intention to proceed," which
3 is exactly what was done by mailing Plaintiffs' Notice of Intent to
4 Take Default to Defendant's counsel. The case in which this
5 particular rule was cited with approval, *Ainsworth v. Dunham*, 235
6 Or 225, 231, 384 P2d 214 (1963), was one where a default was taken
7 with *no actual notice to the Defendant or his counsel whatsoever*,
8 a situation in stark contrast to the facts presented here. To the
9 extent that Defendant argues that Plaintiffs or their counsel were
10 obligated to take any action *in addition to* two weeks' advance
11 notice by mail, there is no legal support for such a position.
12 This is especially so where Defendant's counsel never sent the
13 initial written notice required under ORCP 69A(1) to trigger the
14 necessity of any written notice of intent to seek an order of
15 default.

16 **D. Plaintiffs Will Be Prejudiced if Relief From Default is**
17 **Granted.**
18

19 In addition to demonstrating excusable neglect, a "lack of
20 prejudice to the party who obtained the default is a relevant, even
21 if not a compelling, circumstance." *Kachaturian and Kachaturian*, 58
22 Or App 497, 504, 648 P2d 1313 (1982). Prejudice may be shown by
23 demonstrating that the delay occasioned by setting aside the
24 judgment would place the judgment creditor at a disadvantage with
25 respect to other creditors of the judgment debtor. *Northwest*

1 *Acceptance Corp. v. Bles Studs, Inc.*, 105 Or App 54, 59, 803 P2d
2 775 (1990).

3 Here, there is reason to believe that Defendant owes money to
4 a significant number of creditors which have sought or may seek
5 judgments against Defendant. According to a newspaper article ran
6 in the Statesman Journal in Salem, Oregon, on October 11, 2011, it
7 was reported that Chuck Sides and his partners missed a \$400,000
8 bond payment due in August on parcels in the developed portion of
9 Keizer Station shopping center. Declaration of John Albert, ¶6.

10 Indeed, a search for lawsuits filed against Sides using the
11 Oregon Judicial Information Network (OJIN) reveals that since July,
12 at least three lawsuits have been filed against Sides in Marion
13 County, including *Yarbrough v. Aspen Pacific City, LLC, et al.*,
14 Marion County Case No. 11C19158 for \$499,000.00; *Bank of the West*
15 *v. Mid-Valley Forest Products, LLC , et al.,* Marion County Case No.
16 11C19592 for \$12,606,816.21; and *P&B Pence, LLC v. Charles A.*
17 *Sides*, Marion County Case No. 11C20216 for \$100,000.00.
18 Declaration of John Albert, ¶7.

19 The delay resulting from setting aside the default in this
20 case would cause disadvantage to Plaintiffs vis-a-vis Defendant's
21 other creditors. For this reason, even if excusable neglect is
22 found, the resulting prejudice to Plaintiffs counsels against
23 granting Defendant's motion to set aside.

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III.

CONCLUSION.

Because Defendant's failure to file an answer or otherwise defend was caused by the negligence of his attorney, and his attorney's reliance solely on email service during the time period in question was unreasonable and not excusable neglect as a matter of law, and for the other reasons set forth above, Defendant's Motion to Set Aside Order and Judgment of Default should be DENIED.

DATED this 15th day of December, 2011.

ALBERT & TWEET, LLP

By 

John D. Albert, OSB# 760418
of Attorneys for Plaintiffs
jalbert@albertandtweet.com

l:\dd\DBP Resp M. Set Aside
JDA:dd3

STATE OF OREGON
Marion County Circuit Courts
JAN 03 2012
ENTERED

STATE OF OREGON
Marion County Circuit Courts
DEC 28 2011
FILED

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION

PAUL R.J. CONNOLLY, PC, DEFINED
BENEFIT PLAN, fka Connolly & Goldian,
LLP, Defined Benefit Plan, and THE EQUITY
TRUST COMPANY CUSTODIAN FBO
PAUL R.J. CONNOLLY, IRA,

Plaintiffs,

vs.

CHARLES A. SIDES,

Defendant.

Case No.: 11C22357

**DEFENDANT'S REPLY TO
PLAINTIFF'S RESPONSE TO
DEFENDANT'S MOTION TO SET ASIDE
ORDER AND JUDGMENT OF DEFAULT**

COMES NOW, Defendant, Charles A. Sides, by and through his attorney The Ghiorso Law Firm, in Reply to Plaintiff's Response to Defendant's Motion to set aside the order and judgment of default entered herein, pursuant to ORCP 71.

POINTS AND AUTHORITIES

Under ORCP 71 B(1)(a), a default may be set aside if: "(1) the judgment was entered by virtue of mistake, inadvertence, surprise, or excusable neglect; (2) the defendant acted with reasonable diligence after knowledge of the judgment; and (3) the defendant possesses a meritorious defense to the action." *Charles Schwab & Co. v. Pletz*, 95 Or App 48, 52, 768 P2d

1 407 (1989). As noted in Defendant's Motion to Sets Aside Order and Judgment of Default, all
2 three elements of are present in the case at hand. The cases below provide further support for
3 Defendant's position regarding the first prong of mistake, inadvertence, surprise, or excusable
4 neglect. Defendant further refutes the applicability of the cases cited by Plaintiff in support of
5 the Response to Defendant's Motion.

6 **1) Mistake, inadvertence, surprise, or excusable neglect**

7 When considering a motion for relief from default under the first prong, the Oregon
8 Supreme Court has noted that ORCP 71 B(1)(a) must be liberally construed "so as to avoid the
9 harsh result of depriving a party of its day in court." In *Terlyuk v. Krasnogorov*, 237 Or App 546,
10 240 P3d 740 (Or. App., 2010), the Court of Appeals stated:

11 "Because a default judgment deprives a party of its day in court, the court
12 liberally construes ORCP 71 B(1)(a) so as to avoid that result "when it can be
13 done without doing violence to the statute and established rules of practice that
14 have grown up promotive of the regular disposition of litigation." *Wagar v.*
15 *Prudential Ins. Co.*, 276 Or. 827, 833, 556 P.2d 658 (1976); *National Mortgage*
16 *Co. v. Robert C. Wyatt, Inc.*, 173 Or.App. 16, 23-24, 20 P.3d 216, *rev. den.*, 332
17 Or. 430, 30 P.3d 1183 (2001). "One aspect of such liberal construction is that we
18 view the facts in the light most favorable to the party seeking relief from the
19 default." *Gilbert v. Stancorp Financial Group Inc.*, 233 Or.App. 57, 62, 225 P.3d
20 71 (2009), *rev. den.*, 348 Or. 218, 230 P.3d 20 (2010)." *Terlyuk*, 237 at 553.

21 Under this first prong, including "excusable neglect" and "mistake," Oregon Courts have
22 found that a default should be set aside in a wide variety of circumstances. For example, in
23 *Morrell v. Lane County*, 35 Or App 793, 582 P2d 847 (1978), the Court was willing to set aside a
24 default judgment despite finding that Defendant's conduct was "both inadvertent and
25 neglectful." In *Morrell*, Defendant's attorney failed to answer the complaint based on a mistaken
belief that an appearance was not necessary until after a show cause hearing and plaintiff
obtained a default order. *Id.* at 797. In setting aside the default, the *Morrell* Court noted:

1 "Defendant's nonappearance was the result of its attorney's misunderstanding
2 regarding the particular procedures involved in this proceeding. That
3 misunderstanding was the result of mistake or inadvertence and, if from
4 negligence, it was excusable negligence within the meaning of ORS 18.160.
5 Under these circumstances, we hold as a matter of law that the error of
6 defendant's counsel in this case resulted from mistake, inadvertence or excusable
7 neglect." 35 Or App at 797 (footnote and citations omitted).

8 Certainly if an attorney's misunderstanding of the procedural law is grounds for
9 excusable neglect, then the factual circumstances in the case at hand warrant setting aside the
10 default. In *Saldivar v. Roberts*, 240 Or.App. 371, 246 P.3d 91 (Or. App., 2011), the Court posed
11 the relevant inquiry as "whether defendants have offered a reasonable explanation for their
12 failure to take any action." *Id.* at 376. In this case, Defendant has not only taken action but has
13 offered a reasonable explanation for its failure to file an answer prior to be defaulted. Moreover,
14 Defendant mistakenly assumed that through the course of communications regarding discovery,
15 Plaintiff would inform him of his intent to seek a default and provide him with an opportunity to
16 file an answer. Instead, Plaintiff allowed Defendant to continue to gather discovery and produce
17 documentation, knowing the clock was ticking. For additional examples of grounds for relief
18 from default under a "mistaken assumption" analysis, see *Mary Ebel Johnson, P.C. v. Elmore*,
19 221 Or.App. 166, 170–71, 189 P.3d 35, rev. den., 345 Or. 301, 194 P.3d 147 (2008) (tender of
20 settlement offer together with draft answer by defendant's attorney under mistaken assumption
21 that no default order would be pursued); *Reitz v. Coca-Cola*, 36 Or.App. 487, 584 P.2d 791
22 (1978) (mistaken assumption that subordinate would refer claim to risk management entity held
23 to be excusable neglect). Defendant's conduct here does not rise to a level of inexcusable neglect
24 as it is "the failure to take any action without reasonable explanation is inexcusable neglect."
25 *Stull v. Ash Creek Estates, LLC*, 187 Or.App. 63, 67–68, 66 P.3d 515 (2003).

26 In *Terlyuk*, the Court assessed the question of whether in exercising judicial discretion, if
27 the Court may "grant relief from a default judgment on the basis of a mistake alone or whether
28 the mistake must be reasonable in character or, if the mistake is also neglectful, whether that

1 neglect must be excusable.” *Id.* at 553. In *Terlyuk*, the Court found the claims adjuster
2 explanation that she misread the January 25 letter and found that the default was the result of that
3 misreading to be neglectful but set aside the default nevertheless under ORCP 71. *Id.* The Court
4 did not reach the question of whether posed above because “[i]n most cases under ORCP 71 B,
5 we have usually applied just the “excusable neglect” component of the rule without regard to
6 whether the conduct might also be mistaken or inadvertent.” *Id.* at 553 – 554, citing *Reitz v.*
7 *Coca-Cola*, 36 Or App 487, 584 P2d 791 (1978) (mistaken assumption that subordinate would
8 refer claim to risk management entity held to be excusable neglect).

9 If a similar analysis were to be employed here, whether the calendaring errors and
10 mistaken assumptions that Plaintiff’s counsel would not file for a default are seen as “excusable
11 neglect” or “mistake,” in reaching the next step of analysis, the Court should find Defendant’s
12 behavior was both reasonable and excusable thus the default should be set aside.

13 Exemplary of the liberal interpretation which Oregon Courts have chosen to employ
14 when considering setting aside default motions is the recent application of the *Duvall* holding in
15 *Dickey v. Render*, 244 P.3d 819, 239 Or.App. 253 (Or. App., 2010). In *Duvall v. McLeod*, 331
16 Or. 675, 21 P.3d 88, 89, (Or., 2001), the trial court set aside a default order based upon a
17 misunderstanding between the insurance adjuster and plaintiff’s counsel over the length of the
18 extension of time that defendant would have to file an answer plaintiff’s complaint. In this
19 instance, the Oregon Supreme Court held the trial court’s ruling to be erroneous, not due to the
20 findings as to whether the neglect was excusable but instead, based on Defendant’s failure to file
21 an answer simultaneously with the Motion to Set Aside the default. As a matter of law, the
22 Supreme Court held that the responsive pleading must accompany the motion for relief from
23 default judgment however the Supreme Court took no issue with the trial court’s conclusion that
24 the mistake was excusable. *Id.* at 90.

1 While Defendant has filed an answer in this case, the application of the Duvall holding in
2 *Dickey* provides guidance. The defendant in *Dickey* made the same error in that in *Duvall* and the
3 motion to set aside a default judgment did not include a responsive pleading or Rule 21 motion.
4 *Id.* at 255. However, upon realizing the error, defendant filed a motion to withdraw the first
5 motion without prejudice, and, after the court allowed the withdrawal, filed a new ORCP 71 B(1)
6 motion along with a responsive pleading. *Id.* In interpreting *Duvall*, the Court of Appeals
7 declined to extend the holding to find that the trial court abused its discretion in permitting
8 Defendant to withdraw and refile its motion citing ORCP 12 A and the requirement that "All
9 pleadings shall be liberally construed with a view of substantial justice between the parties.". *Id.*
10 at 260.

11 In response to Defendant's motion, Plaintiff relies upon *Longyear v. Edwards*, 342 P.2d
12 762, 217 Or. 314 (Or., 1959), in which, after all attorneys of record were given notice, the court
13 entered an order dismissing Plaintiff's action for want of prosecution. The case was trial ready
14 in 1950 and no action was taken on the file from June 4, 1951 to October 25, 1956. Clearly, this
15 case is distinguishable from *Longyear* where Plaintiff filed for an order of default and judgment
16 on November 22, 2011 and Defendant's answer was filed the next day on November 23, 2011.
17 By no stretch of the imagination could Defendant's counsel's actions rise to the level of "a
18 complete lack of diligence" as alluded to by Plaintiffs. *Id.* at 766.

19 While Defendant concedes the Court has declined to set aside a default in cases where a
20 defendant simply chose to "ignore a matter--even in the face of difficult circumstances" as not
21 providing a reasonable explanation so as to give rise to excusable neglect, this is not the case
22 here. Defendant was engaged in discovery and on-going communications with Plaintiff and had
23 a reasonable expectation based on the course of exchanges between the parties, that a default
24 would not be sought.

25 ///

2) Prejudice to Plaintiff

To briefly address Plaintiff's assertions of prejudice, it must be noted that the cases cited by Plaintiff are off point and not applicable. Plaintiff first cites *Marriage of Kachaturian*, 648 P.2d 1313, 58 Or.App. 497 (Or. App., 1982). Not only is *Kachaturian* a marital proceeding which factually has no similarity to this case, the Court granted the Defendant relief from a default order finding reasonable diligence and that a claim of a meritorious defense had been tendered. *Id.* at 1317. Moreover, the sentence immediately following that cited by Plaintiff reads, "The statute is to be construed liberally and should be applied with more favor to a defaulted defendant than to a plaintiff, to the end that the rights of the parties may be determined on the merits of the controversy." *Id.*


Plaintiff further relies upon *Northwest Acceptance Corp. v. Bles Studs, Inc.*, 803 P.2d 775, 105 Or.App. 54 (Or. App., 1990), in which the original complaint was filed in March, 1982 and an answer was filed June of 1982. Following motions to strike, the Court granted plaintiff leave to file an amended complaint which was done in December 1982. Defendants did not file a timely answer and a default judgment was entered in April, 1983. Defendants' motion In June, 1983, defendants moved to set aside the judgment on the grounds of excusable neglect. *Id.* at 55. The trial court made a conditional ruling regarding setting aside the default which effectively mandated that defendant comply with Court orders which Defendant complied with. *Id.* Although defendant's motion to set aside the default judgment was still pending and had not been decided, the case went to trial. The Court of Appeals determined that it was erroneous to allow the matter to have gone to trial and remanded the case. On remand, the trial court denied defendants' motion to set aside the default. On appeal, the Court upheld the refusal to set aside the default however, the basis of the holding was not sole based on the prejudice to Plaintiff due to the number creditors in line, it must be noted this was only one of numerous factors considered in *Northwest. Id.* at 778. Moreover, the Court pointed out that although defendants

1 clearly knew that a default would be taken unless another pleading was filed, they did not try to
2 contact an attorney until at least seven days after the answer was to be filed. *Id.* at 778.
3 Moreover, defendants did not file an amended answer or move to set aside the default until seven
4 weeks after the default was entered. *Id.* Thus once again, the factual and temporal differences in
5 this case do not require adherence to the holding in *Northwest*.

6 CONCLUSION

7 In summary, Defendant has shown that the failure to respond was due to excusable
8 neglect leading to a calendaring error. Second, the Defendant took immediate remedial action
9 upon learning of the default. Finally, Defendant must be allowed to present its meritorious
10 defense in Court. Therefore, for the reasons set forth above, the court grant Defendant's Motion
11 to Set Aside the Order and Judgment of Default entered herein, and grant Defendant further
12 leave to amend his answer to set forth his meritorious defense.

13
14 DATED: December 28, 2011.

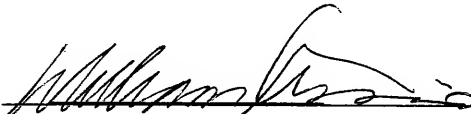
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16
17 By: 
18 William L. Ghiorso, OSB #902706
19 The Ghiorso Law Firm
20 495 State Street, Suite 500
21 Salem, OR 97301
22 Ph: (503) 362 – 8966
23 Fax: (503) 362 – 1158
24
25

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of DEFENDANT'S REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO SET ASIDE ORDER AND JUDGMENT OF DEFAULT and MOTION FOR LEAVE TO AMEND will be received by the following attorneys, by fax at the number below and by placement in US Mail, postage prepaid, addressed to the following attorney(s):

John Albert
Albert and Tweet
242 Church Street SE
Salem, OR 97301
FAX: (503) 375-2649

Dated: December 28, 2011


William L. Ghiorso, OSB # 902706
ghiorsolawfirm@hotmail.com
The Ghiorso Law Firm
495 State Street, Suite 500
Salem, OR 97301
Phone: (503) 362 - 8966
Fax: (503) 362 - 1158
Attorney for Defendant



1 IN THE CIRCUIT COURT OF THE STATE OF OREGON

2 MARION COUNTY CASE NO. 11C22357

3 PAUL R.J. CONNOLLY, PC, DEFINED)
4 BENEFIT PLAN, fka Connolly &) ORDER DENYING DEFENDANT
5 Goldian, LLP, Defined Benefit Plan, and) CHARLES A. SIDES'
6 THE EQUITY TRUST COMPANY CUSTODIAN) MOTIONS TO SET ASIDE
7 FBO PAUL R. J. CONNOLLY, IRA,) ORDER AND JUDGMENT OF
8) DEFAULT AND FOR LEAVE TO
9 Plaintiffs,) AMEND
10 vs.)
11)
12 CHARLES A. SIDES,)
13 Defendant.)

14 On November 22, 2011, the court signed an Order of Default
15 against defendant Charles A. Sides ("Sides"). On November 30, 2011,
16 Defendant Sides filed a Motion to Set Aside Order and Judgment of
17 Default and Motion for Leave to Amend. Plaintiffs filed a Response
18 on December 15, 2011, and Defendant replied on December 28, 2011.

19 A hearing on the motions was held before the Honorable
20 Courtland Geyer on January 13, 2012, at which Plaintiffs appeared
21 by and through their attorney, John D. Albert, and Defendant Sides
22 appeared by and through his attorney, William Ghiorso.

23 The Court, having heard the motions and having considered the
24 declarations and the memoranda of law filed by the parties and the
25 arguments of counsel as well as the applicable law, and the Court


1 having issued a decision from the bench, and the Court being fully
2 advised in the premises,

3 IT IS HEREBY ORDERED as follows:


4 A. That Defendant's Motion to Set Aside Order and Judgment
5 of Default is DENIED.

6 B. That Defendant's Motion for Leave to Amend his Answer is
7 DENIED as moot.

8 DATED this 20th day of January, 2012.

9 
10 _____
11 Honorable Courtland Geyer
Marion County Circuit Court Judge

12 Respectfully submitted by:

13 
14 _____
15 John D. Albert, OSB #760418
16 Albert & Tweet, LLP
17 PO Box 968
18 Salem, OR 97308
(503) 585-2056

19 1:\dd\sidesorder

ENTERED

JAN 23 2012

12



IN THE CIRCUIT COURT OF THE STATE OF OREGON

MARION COUNTY CASE NO. 11C22357

PAUL R.J. CONNOLLY, PC, DEFINED)
BENEFIT PLAN, fka Connolly &)
Goldian, LLP, Defined Benefit Plan, and)
THE EQUITY TRUST COMPANY CUSTODIAN)
FBO PAUL R. J. CONNOLLY, IRA,)

Plaintiffs,)

vs.

CHARLES A. SIDES,

Defendant,)

GENERAL DEFAULT
JUDGMENT AND
MONEY AWARD
Ex Parte

This matter comes before the Court on Plaintiffs' Ex-Parte Motion for Judgment and the Court having entered an Order of Default against Defendant, Charles A. Sides, and the Court being fully advised, now therefore,

IS HEREBY ORDERED AND ADJUDGED that Plaintiffs, Paul R. J. Connolly, PC Defined Benefit Plan, and Equity Trust Company Custodian FBO Paul R. J. Connolly, IRA are awarded judgment against Defendant, Charles A. Sides, as follows:

Page 1 - GENERAL DEFAULT JUDGMENT AND MONEY AWARD

ALBERT & TWEET, LLP
PO Box 968
Salem, OR 97308
(503) 585-2056
FAX (503) -375-2649

1 A. ON THE FIRST AND THIRD CLAIMS FOR RELIEF:

2 Judgment is awarded in favor of Paul R.J. Connolly, PC,
3 Defined Benefit Plan, fka Connolly & Goldian, LLP, Defined Benefit
4 Plan and The Equity Trust Company Custodian FBO Paul R. J.
5 Connolly, IRA (jointly and severally), and against Defendant,
6 Charles A. Sides, in the sum \$541,372.43, plus interest thereon at
7 the rate of 13% per annum from September 7, 2011, until paid in
8 full;

9 B. ON THE SECOND CLAIM FOR RELIEF HEREIN:

10 Judgment is awarded in favor of Paul R.J. Connolly, PC,
11 Defined Benefit Plan, fka Connolly & Goldian, LLP, Defined Benefit
12 Plan, and against Defendant, Charles A. Sides, in the sum
13 \$35,994.00, plus interest thereon at the rate of 12% per annum from
14 September 13, 2011, until paid in full;

15 C. ON ALL CLAIMS FOR RELIEF:

16 Judgment is awarded to Plaintiffs for their attorney's fees
17 incurred herein in the sum of \$2,705.00, plus costs and
18 disbursements in the sum of \$881.00, plus interest
19 on said fees and costs at the rate of 13% per annum from the date
20 of judgment, until paid in full.

1 ON ITS THIRD CLAIM FOR RELIEF HEREIN:

2 1. IT IS HEREBY DECLARED that Plaintiffs' security interest
3 represented by the Agreement, dated July 7, 2006, is a valid and
4 subsisting lien on all of the collateral described therein namely:

5 all of Defendant's member interest and member rights in
6 NORTHWEST NATIONAL, L.L.C., an Oregon limited liability
7 company, including, but not limited to, all dividends,
8 general intangibles related thereto, payments, dividends,
9 compensation, dissolution distributions, subscription
10 rights, liquidating dividends, fees, entitlements and
11 distributions on income and proceeds from assets, sales
12 and profits that are payable to Defendant that the
13 Defendant may derive by and from the LLC;

14 superior to any interest, lien, or claim of the Defendant, in that
15 collateral.

16 2. IT IS FURTHER DECLARED that Plaintiffs' security interest
17 is foreclosed and the subject collateral, shall be sold by the
18 Sheriff of Marion County, Oregon, or the Sheriff of such other
19 county where the subject collateral may be found, whenever
20 necessary to effectuate the Judgment and Order of the Court as
21 prayed for, in the manner provided by law, and that the net
22 proceeds of said sale be applied:

23 a. first toward the payment of the costs of said sale
24 b. then toward the payment of Plaintiffs' judgment under their
25 First Claim for Relief;
26 c. if any surplus, then toward the payment of Plaintiff's
27 judgment under its Second Claim for Relief;

Page 3 - GENERAL DEFAULT JUDGMENT AND MONEY AWARD

ALBERT & TWEET, LLP
PO Box 968
Salem, OR 97308
(503) 585-2056
FAX (503) -375-2649

1 IT IS FURTHER ORDERED that Plaintiffs or other party is
2 permitted to bid for and purchase the collateral or any portion
3 thereof at the sale;

4 IT IS FURTHER ORDERED that if the proceeds of sale are
5 insufficient to satisfy Plaintiffs' judgment against Defendant,
6 then such deficiency shall be enforced by execution as provided by
7 law.

8 IT IS FURTHER DECLARED that Defendant and all persons claiming
9 through or under him are forever foreclosed of any interest, claim,
10 or right in and to the collateral described above.

11 MONEY AWARD SUMMARY

12 1. Judgment Creditor:

13 A. First and Third Claims for Relief: Paul R.J. Connolly,
14 PC, Defined Benefit Plan, fka Connolly & Goldian, LLP,
15 Defined Benefit Plan and The Equity Trust Company
16 Custodian FBO Paul R. J. Connolly, IRA (jointly and
17 severally); c/o Paul R. J. Connolly, PO Box 3095, Salem,
18 OR 97302

19 B. Second Claim for Relief: Paul R.J. Connolly, PC,
20 Defined Benefit Plan, fka Connolly & Goldian, LLP,
21 Defined Benefit Plan; c/o Paul R. J. Connolly, PO Box
22 3095, Salem, OR 97302

23 2. Judgment Creditor's Attorney: John D. Albert, Albert & Tweet,
24 LLP, PO Box 968, Salem. OR 97308, (503) 585-2056;

25 3. Judgment Debtor(s):

- 26 a. Name(s): Charles A. Sides;
27 b. Address: 245 13th St. NE, Salem, OR 97301
28 c. Phone No.:

1 d. Date of Birth:
2 e. Social Security No.:
3 f. Drivers License Information:
4 g. Debtor's attorney:

5 4. Name of any person or public body known to the Judgment
6 Creditor, other than the Judgment Creditor, who is entitled to
7 any portion of a payment made on judgment:

8 5. Principal Amount of Judgment:

9 A. FIRST AND THIRD CLAIMS FOR RELIEF: \$541,372.43;
10 B. SECOND CLAIM FOR RELIEF: \$35,994.00

11 6. Prejudgment simple interest:

12 A. FIRST AND THIRD CLAIMS FOR RELIEF: at the rate of 13%
13 per annum on \$541,372.43 from September 7, 2011, until
14 the date of entry hereof:
15 a. Accrued through November 18, 2011: \$14,075.68;
16 b. Per diem thereafter until judgment: \$192.817;

17 B. SECOND CLAIM FOR RELIEF: at the rate of 12% per annum
18 on \$35,994.00 from September 13, 2011, until the date of
19 entry hereof:
20 a. Accrued through November 18, 2011: \$792.85;
21 b. Per diem thereafter until judgment: \$11.833;

22 7. Postjudgment simple interest:

23 A. ON FIRST AND THIRD CLAIMS FOR RELIEF: at the rate of
24 13% per annum, on the total of all sums awarded herein
25 (items 5A, 6Aa and 6Ab), from date of judgment, until
26 paid in full;
27

28 B. SECOND CLAIM FOR RELIEF: at the rate of 12% per
29 annum, on the total of all sums awarded herein (items 5B,
30 6Ba and 6Bb), from date of judgment, until paid in full;

31 C. ON ALL CLAIMS FOR RELIEF: at the rate of 13% per annum
32 on costs and fees (item 8), from date of judgment, until
33 paid in full;

1 8. Costs awarded herein in the sum of \$881.00 and
2 attorney fees awarded herein in the sum of \$2,705.00.
3

4 Dated this 22nd day of ~~November~~, 2011.

20th day of January, 2012

5 
6 Circuit Court Judge

7 **SUBMITTED BY:**

8 John D. Albert, OSB# 760418
9 of attorneys for Plaintiffs

10 p:\bf\judg&ord\sidesjudg

ENTERED

FEB 27 2012

#12



1 IN THE CIRCUIT COURT OF THE STATE OF OREGON

2 MARION COUNTY CASE NO. 11C22357

3 PAUL R.J. CONNOLLY, PC, DEFINED)
4 BENEFIT PLAN, fka Connolly &)
5 Goldian, LLP, Defined Benefit Plan, and)
6 THE EQUITY TRUST COMPANY CUSTODIAN)
7 FBO PAUL R. J. CONNOLLY, IRA,) SUPPLEMENTAL JUDGMENT
8 Plaintiffs,) AND MONEY AWARD
9 vs.) (for Attorney Fees)
10 CHARLES A. SIDES,)
11 Defendant,)

12 This matter comes before the Court on Plaintiffs' Motion for
13 Supplemental Judgment and the Court having entered its General
14 Judgment against Defendant, Charles A. Sides on January 23, 2012,
15 and having reviewed Plaintiffs' Supplemental Statement for
16 Attorney Fees, Costs and Disbursements, and being fully advised,
17 now therefore,

18 IS HEREBY ORDERED AND ADJUDGED that Plaintiffs, Paul R. J.
19 Connolly, PC Defined Benefit Plan, and Equity Trust Company
20 Custodian FBO Paul R. J. Connolly, IRA are awarded supplemental
21 judgment against Defendant, Charles A. Sides, for their
22 supplemental attorney's fees incurred herein in the sum of

1 \$6,063.50, plus interest on said fees at the rate of 13%
2 per annum from the date of entry hereof, until paid in full.

3 MONEY AWARD SUMMARY

4 1. Judgment Creditor: Paul R.J. Connolly, PC, Defined Benefit
5 Plan, fka Connolly & Goldian, LLP, Defined Benefit Plan and The
6 Equity Trust Company Custodian FBO Paul R. J. Connolly, IRA
7 (jointly and severally); c/o Paul R. J. Connolly, PO Box 3095,
8 Salem, OR 97302

9 2. Judgment Creditor's Attorney: John D. Albert, Albert & Tweet,
10 LLP, PO Box 968, Salem. OR 97308, (503) 585-2056;

11 3. Judgment Debtor(s):

- 12 a. Name(s): Charles A. Sides;
13 b. Address: 245 13th St. NE, Salem, OR 97301
14 c. Phone No.:
15 d. Date of Birth:
16 e. Social Security No.:
17 f. Drivers License Information:
18 g. Debtor's attorney:

19 4. Name of any person or public body known to the Judgment
20 Creditor, other than the Judgment Creditor, who is entitled to
21 any portion of a payment made on judgment:

22 5. Principal Amount of Judgment: see item 8, below.

23 6. Prejudgment simple interest: n/a

24 7. Postjudgment simple interest: 13% per annum, from the date
25 hereof, until paid in full;

26 8. Supplemental attorney fees awarded herein: \$6,063.50.

27 Dated this 24th day of Feb, 2012.
28

29 
30 Circuit Court Judge

31 SUBMITTED BY:

32 John D. Albert, OSB# 760418
33 of attorneys for Plaintiffs

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